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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, November 9, 2010
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AI37

[NRC–2009–0014]

Domestic Licensing of Production and Utilization Facilities; Updates to Incorporation by Reference of Regulatory Guides; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that was published in the **Federal Register** on October 5, 2010 (75 FR 61321). The final rule amends the Nuclear Regulatory Commission's (NRC) regulations to incorporate by reference the latest revisions of two previously incorporated regulatory guides. This document is necessary to include certification in the rule that the NRC has complied with the requirements of the Congressional Review Act. This information was inadvertently omitted from the final rule.

DATES: The correction is effective on November 4, 2010, the date the original final rule becomes effective.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: (301) 492–3667 or Toll Free: (800) 368–5642.

SUPPLEMENTARY INFORMATION: At the top of the third column of Page 61335 of **Federal Register** document 2010–24814, published on October 5, 2010 (75 FR 61321), add the following text:

XII. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Dated at Rockville, Maryland this 14th day of October 2010.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch.

[FR Doc. 2010–26393 Filed 10–20–10; 8:45 am]

BILLING CODE 7590–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2010–0459; A–1–FRL–9215–9]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Determination of Attainment of the 1997 Ozone Standard for the Providence, RI Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is determining that the Providence (All of Rhode Island) moderate 1997 8-hour ozone nonattainment area has attained the 1997 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon complete, quality-assured, certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2007–2009 monitoring period. Preliminary data available to date for the 2010 ozone season is consistent with continued attainment. Under the provisions of EPA's ozone implementation rule, the requirements for this area to submit an attainment demonstration, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans related to attainment of the 1997 8-hour ozone NAAQS shall be suspended for so long as the area continues to attain the 1997 ozone NAAQS. In addition, EPA is determining that this area has attained the 1997 ozone NAAQS as of June 15, 2010, its applicable attainment date.

DATES: *Effective Date:* This rule is effective on November 22, 2010.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2010–0459. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912, telephone number (617) 918–1664, fax number (617) 918–0664, e-mail *Burkhart.Richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. What actions is EPA taking?

EPA is determining that the Providence (All of Rhode Island) moderate 8-hour ozone nonattainment area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based upon complete, quality-assured and certified ambient air monitoring data that show the area has monitored attainment of the 1997 ozone NAAQS

for the 2007–2009 monitoring period. In addition, preliminary data through June 15, 2010 show this area meets the 1997 ozone NAAQS. EPA is also determining, under section 181(b)(2)(A) of the Clean Air Act (CAA), that this area has attained the 1997 ozone NAAQS by its applicable attainment date (June 15, 2010).

Other specific details related to the determination and the rationale for EPA's action are explained in the Notice of Proposed Rulemaking (NPR) published on July 28, 2010 (75 FR 44179) and will not be restated here. No comments were received on the NPR.

II. What is the effect of these actions?

Under the provisions of EPA's ozone implementation rule (*see* 40 CFR 51.918), the determination that the area is attaining the standard suspends the requirements for the Providence (All of Rhode Island) moderate ozone nonattainment area to submit an attainment demonstration, a reasonable further progress plan, section 172(c)(9) contingency measures, and any other planning State Implementation Plans (SIPs) related to attainment of the 1997 8-hour ozone NAAQS for so long as the area continues to attain the 1997 ozone NAAQS.

This action does not constitute a redesignation to attainment under CAA section 107(d)(3), because the area does not have an approved maintenance plan as required under section 175A of the CAA, nor a determination that the area has met the other requirements for redesignation. The classification and designation status of the area remains moderate nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that it meets the CAA requirements for redesignation to attainment. If EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 1997 8-hour ozone standard, the basis for the suspension of these requirements would no longer exist, and the area would thereafter have to address the pertinent requirements.

In addition, in accordance with CAA section 181(b)(2)(A), EPA is determining that the Providence (All of Rhode Island) 1997 8-hour ozone nonattainment area has attained the 1997 ozone NAAQS by its applicable attainment date of June 15, 2010. The effect of this determination of attainment by the area's attainment date is to discharge EPA's obligation under section 181(b)(2)(A), and to establish that, in accordance with that section, the area will not be reclassified for failure to attain by its applicable attainment date.

III. Final Action

EPA is determining that the Providence (All of Rhode Island) 8-hour ozone nonattainment area has attained the 1997 8-hour ozone standard based on three years of complete, quality-assured and certified ozone monitoring data from 2007–2009. Preliminary data available through June 15, 2010 are consistent with continued attainment. As provided in 40 CFR 51.918, this determination suspends the requirements for Rhode Island to submit an attainment demonstration, a reasonable further progress plan, contingency measures under section 172(c)(9), and any other planning SIP related to attainment of the 1997 8-hour ozone NAAQS for this area, for so long as the area continues to attain the 1997 ozone standard. In addition, pursuant to CAA section 181(b)(2)(A), EPA is determining that the Providence (All of Rhode Island) 8-hour ozone nonattainment area has attained the 1997 8-hour ozone NAAQS by its applicable attainment date (June 15, 2010).

IV. Statutory and Executive Order Reviews

These actions make a determination of attainment based on air quality, and result in the suspension of certain Federal requirements, and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, these actions do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these actions and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 20, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 8, 2010.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

■ Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart OO—Rhode Island

■ 2. Section 52.2088 is amended by adding paragraph (d) to read as follows:

§ 52.2088 Control strategy: Ozone.

* * * * *

(d) *Determination of Attainment.* Effective November 22, 2010, EPA is determining that the Providence (All of Rhode Island) 8-hour ozone nonattainment area has attained the 1997 8-hour ozone standard based on 2007–2009 monitoring data. Under the provisions of EPA's ozone implementation rule (see 40 CFR 51.918), this determination suspends the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act for as long as the area does not monitor any violations of the 1997 8-hour ozone standard. If a violation of the 1997 ozone NAAQS is monitored in the Providence (All of Rhode Island) 8-hour ozone nonattainment area, this determination shall no longer apply. In addition, this area met its June 15, 2010 attainment deadline for the 1997 ozone standard.

[FR Doc. 2010–26446 Filed 10–20–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–1096; FRL–9215–8]

Approval and Promulgation of Implementation Plans; Illinois; Voluntary Nitrogen Oxides Controls

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 1, 2001, the Illinois Environmental Protection Agency (Illinois EPA) submitted a request for EPA approval of a State Implementation Plan (SIP) revision for regulations governing Nitrogen Oxides (NO_X) emission allowances granted for implementation of voluntary control of NO_X emissions from sources other than those covered by other Illinois NO_X emission control regulations. On March 4, 2008, EPA proposed to disapprove the requested SIP revision. This final rule completes the disapproval of the requested SIP revision.

DATES: This final rule is effective on November 22, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2007–1096. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Edward Doty, Environmental Scientist, at (312) 886–6057 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, *Doty.Edward@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What action is EPA taking?

EPA is disapproving a requested Illinois SIP revision, submitted on May 1, 2001, which would have incorporated a rule governing NO_X emission allowances (estimation and crediting of NO_X emission reductions as emission allowances for use in a national, Federally-operated NO_X emissions trading program) resulting from the application of voluntary NO_X emission reductions at source facilities not subject to Illinois' existing NO_X emission control rules. This rule is specified/codified in Illinois' 35 Illinois Administrative Code (IAC), part 217, subpart X (the Subpart X rule).

II. Did anyone comment on the proposed disapproval of the state's SIP revision request?

No comments were received during the 30-day comment period on the proposed disapproval of the Subpart X rule as an Illinois SIP revision. The proposed rule was published on March 4, 2008 (73 FR 11565).

III. Illinois' Voluntary Nitrogen Oxides Control Rule

On May 1, 2001, the Illinois EPA submitted 35 Illinois Administrative Code (IAC), part 217, subpart X as a requested revision of the Illinois SIP. The Subpart X rule provided for the determination and crediting of NO_X emission reductions resulting from the voluntary application of NO_X emission controls as NO_X emission allowances that could be sold in a national NO_X emission allowance trading system. A detailed description of the Subpart X rule and its subparts can be found in our proposed rule published in the **Federal Register** on March 4, 2008 (73 FR 11566).

IV. Why did EPA propose to disapprove this rule as a SIP revision?

Our March 4, 2008, proposed rule contained a number of comments specific to each subpart of the Subpart X rule (73 FR 11573). Based on the more detailed comments and concerns raised in the proposed rule, we had the following general concerns regarding the Subpart X rule: (1) The Subpart X rule would unacceptably grant NO_X emission allowances for source closures; (2) the rule does not prevent crediting of facility-specific NO_X emission reductions resulting from shifting of production and NO_X emissions from one facility to another; (3) the rule establishes an emission baseline year (from which NO_X emission allowances are earned through subsequent NO_X emission reductions), 1995, that is too far in the past, prior to the State's adoption of the Subpart X rule and prior to the baseline year used for other sources involved in EPA's NO_X Budget Trading Program; (4) the rule

unacceptably allows the use of 40 CFR part 60 emission monitoring requirements rather than 40 CFR part 75 monitoring requirements required of other sources involved in the NO_X Budget Trading Program; and, (5) the rule contains other minor deficiencies as noted in our March 4, 2008, proposed rule. Together, these problems led us to propose disapproval of the Subpart X rule as a revision to the Illinois SIP.

We have received no public comments or additional supporting documentation from the State that reverses or negates the above concerns. Therefore, these concerns remain as the bases for this final action.

V. Final Action

EPA is disapproving Illinois' 35 Illinois Administrative Code (IAC), part 217, subpart X rule submitted as a requested SIP revision on May 1, 2001.

VI. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA).

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a State rule implementing a Federal Standard.

National Technology Transfer Advancement Act

In reviewing State submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State submission, to use VCS in place of a State submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 20, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: October 7, 2010.

Susan Hedman,

Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

■ 2. Section 52.726 is amended by adding paragraph (hh) to read as follows:

§ 52.726 Control strategy: Ozone.

* * * * *

(hh) *Disapproval.* EPA is disapproving 35 Illinois Administrative Code part 217, subpart X, Voluntary

NO_X Emissions Reduction Program, as a revision to the Illinois SIP.

[FR Doc. 2010–26438 Filed 10–20–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2010–0415; FRL–9210–3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to a State Implementation Plan (SIP) submitted by the State of Missouri. The purpose of this revision is to update the Springfield City Code and is part of ongoing SIP maintenance to assure that outdated local codes and ordinances do not remain in the SIP. The revision reflects updates to the Missouri statewide rules, and will ensure consistency between the applicable local agency rules and the Federally approved rules.

DATES: This direct final rule will be effective December 20, 2010, without further notice, unless EPA receives adverse comment by November 22, 2010. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2010–0415, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *E-mail: kemp.lachala@epa.gov.*

3. *Mail or Hand Delivery:* Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2010–0415. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lachala Kemp at 913–551–7214, or by e-mail at *kemp.lachala@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA. This section provides additional information by addressing the following questions:

I. What is being addressed in this document?

On January 21, 2009, EPA received a request from the Missouri Department of Natural Resources to approve revisions to the SIP relating to changes in the SIP-approved program for Springfield, Missouri. In order for the local program's "Air Pollution" rules to be incorporated into the Federally-enforceable SIP, on behalf of the local agency, the State must submit the formally adopted regulations which are consistent with State and Federal requirements to EPA for inclusion in the SIP. The regulation adoption process generally includes public notice of a public comment period and a public hearing, and formal adoption of the rule by the State authorized rulemaking body. In this case that rulemaking body is the local agency. After the local agency formally adopts the rule, the local agency submits the rulemaking to the State, and then the State submits the rulemaking to EPA for consideration for formal action (inclusion of the rulemaking into the SIP). EPA must provide public notice and seek additional public comment regarding the proposed Federal action on the State's submission.

The 2009 revisions for Springfield consist of administrative changes, removing Springfield City Code Chapter 2A and replacing it with the Springfield City Code Chapter 6. EPA had previously approved portions of Chapter 2A, as it relates to regulation of incinerators. In general, these changes are administrative only and they do not add any new limitations, conditions or requirements. The revisions retain all previous sections pertaining to definitions, test methods and tables, stack emission test methods, and emission limitations for incinerators, but with new numbering and titles. The revision also removes compliance schedules for incinerators which were not in compliance upon the original effective date of the rule (1969).

II. What revision is EPA approving?

EPA is approving revisions to the relevant portions of Springfield City Code Chapter 2A "Air Pollution Control Standards", which are now found in Chapter 6 of the Code. The local agency's "Air Pollution Control Standards" were revised as follows:

Article I, section 2A has been renumbered as Chapter 6 with other corresponding renumbering within the chapter.

All previous sections pertaining to definitions, test methods and tables, stack emission test methods, and incinerators have all been retained, but with new numbering and titles.

What action is EPA taking?

EPA is approving these revisions to the Springfield City Code Chapter 2A Air Pollution Control Standard as described above. We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 20, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 22, 2010.

Karl Brooks,

Regional Administrator, Region 7.

■ Accordingly, 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

■ 2. In § 52.1320 the table in paragraph (c) is amended by revising the entry for "Chapter 2A" under the heading "Springfield—Chapter 2A—Air Pollution Control Standards" to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources, Chapter 2 Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area				

EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
*	*	*	*	*
Springfield—Chapter 2A—Air Pollution Control Standards				
Article I	Definitions	12/04/08	10/21/10 [*insert FR page number where the document begins*].	Only Section 6–2 is approved by EPA.
Article II	Administrative and Enforcement. Incinerators.	12/04/08		Only Sections 6–151, 155, 156, and 171 are approved by EPA.
Article V		12/04/08		Only Sections 6–311 through 314 are approved by EPA.

* * * * *

[FR Doc. 2010–24918 Filed 10–20–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 110

RIN 0906–AA83

Countermeasures Injury Compensation Program (CICP): Administrative Implementation; Interim Final Rule

Correction

In rule document 2010–25110 beginning on page 63656 in the issue of Friday, October 15, 2010, make the following corrections:

1. On page 63656, in the first column, in the **DATES** section, in the second and third lines, "Written *one* comments" should read "Written comments".

2. On the same page, in the same column, in the **ADDRESSES** section, in the fourth and fifth lines, "submit your comments in only of these ways" should read "submit your comments in only *one* of these ways".

[FR Doc. C1–2010–25110 Filed 10–20–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0910051338–0151–02]

RIN 0648–XZ44

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Correction to Cod Landing Limit for Handgear A Vessels in the Common Pool Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment of landing limit.

SUMMARY: This action addresses an oversight in a previous inseason action and decreases the landing limit for cod to 50 lb (22.7 kg) per trip for NE multispecies limited access Handgear A (HA) permitted vessels fishing in the common pool fishery for the remainder of the 2010 fishing year (FY) (through April 30, 2011). This action is authorized under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and is required by the regulations implementing Amendment 13, Amendment 16, and Framework Adjustment 44 (FW 44) to the NE Multispecies Fishery Management Plan (FMP).

DATES: Effective October 21, 2010, through April 30, 2011.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281–9341, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing possession and landing limits for HA vessels fishing under common pool regulations at § 648.82(b)(6) state that "The [300 lb (136.1 kg)] cod trip limit shall be adjusted proportionally to the trip limit for [Gulf of Maine (GOM)] cod (rounded up to the nearest 50 lb (22.7 kg)), as specified in § 648.86(b)). An inseason action published in the **Federal Register** on September 27, 2010 (75 FR 59154), reduced the GOM cod trip limit for NE multispecies common pool vessels fishing under a day-at-sea (DAS) to 100 lb (45.4 kg) per DAS up to 1,000 lb (453.6 kg) per trip, from the original 800 lb (362.9 kg) per DAS up to 4,000 lb (1,814.4 kg) per trip limit, a 87.5 percent reduction. Therefore, the HA cod trip limit should have been reduced 87.5 percent from 300 lb (136.1 kg) to 37.5 lb (17.0 kg), and rounded up to 50 lb (22.7 kg)). The HA cod limit applies to both the GOM and Georges Bank (GB) stocks of cod. Additional details regarding the need to reduce the common pool GOM cod in order to decrease the likelihood of harvest exceeding the subcomponent of the annual catch limit (ACL) allocated to the common pool, and the authority of the Administrator, Northeast (NE) Region, NMFS (Regional Administrator) to take such action, are stated in the action published on September 27, 2010 (75 FR 59154), and are not repeated here.

This action therefore, reduces the common pool cod trip limit for HA vessels to 50 lb (22.7 kg) from 100 lb (45.4 kg). Catch will be closely monitored through dealer-reported landings, vessel monitoring system (VMS) catch reports, and other available information. Further inseason adjustments to decrease the trip limit, or to increase differential DAS measures, may be considered, based on updated catch data and projections. Conversely, if the common pool sub-ACL is projected to be under-harvested by the end of FY 2010, in-season adjustments,

such as increasing the trip limit for the remainder of FY2010, will be considered.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because notice, comment, and a delayed effectiveness would be impracticable and contrary to the public interest. The regulations at §§ 648.82(b)(6) require that the HA cod trip limit be adjusted proportionally to the trip limit for GOM cod. By an administrative error, the inseason action published on September 27, 2010, reduced the GOM cod trip limit but failed to address the required proper reduction to the HA cod trip limit. This action would correct this oversight by reducing the cod trip limit for NE multispieces HA vessels in the common pool fishery from 100 lb/trip to 50 lb/trip.

It is important to take this action immediately due to the oversight in not effecting this trip limit reduction earlier and the concern that any delay in effectiveness would further disadvantage vessels subject to the lower trip limits implemented on September 27, 2010. Providing for prior notice and comment for this action are unnecessary because the action is non-discretionary and NMFS could not adjust the measure based on comments received. The time necessary to provide delayed effectiveness would prevent NMFS from implementing the reduced trip limit in a timely manner and would increase the likelihood of exceeding the common pool sub-ACL. Attainment of any of the common pool sub-ACLs prior to the end of the FY on April 30, 2011, would result in accountability measures being put in place for the common pool in FY 2011. These restrictions could result in the loss of yield of other valuable species caught by vessels in the common pool.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 15, 2010.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–26504 Filed 10–18–10; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XZ79

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2010 Pacific total allowable catch (TAC) apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 16, 2010, through 2400 hrs, A.l.t., December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The 2010 Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA is 3,678 metric tons (mt), as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the 2010 Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,600 mt, and is setting aside the remaining 78 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 13, 2010.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 15, 2010.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–26505 Filed 10–18–10; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–01]

RIN 0648–XZ85

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI) for vessels participating in the BSAI trawl limited access fishery. This action is necessary to fully use the 2010 total allowable catch (TAC) of Atka mackerel in these areas specified for vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 15, 2010, through 1200 hrs, A.l.t., October 22, 2010. Comments must be received at the following address no later than 4:30 p.m., A.l.t., November 1, 2010.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648–XZ85, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov.*
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand Delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for Atka mackerel by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea on September 1, 2010 (75 FR 53606, September 1, 2010).

NMFS has determined that approximately 300 mt of the 2010 Atka mackerel TAC specified for vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2010 TAC of Atka mackerel in these areas specified for vessels participating in the BSAI trawl limited access fishery, NMFS is terminating the previous closure and is reopening directed fishing for Atka mackerel by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea effective 1200 hrs, A.l.t., October 15, 2010. Pursuant to § 679.25(b), the Regional Administrator considered the following factors in reaching this decision: (1) The catch per unit of effort and the rate of harvest and, (2) the economic impacts on fishing businesses affected in the BSAI trawl limited access sector.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the Atka mackerel fishery in the Eastern Aleutian District and the Bering Sea subarea for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 14, 2010. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for Atka mackerel fishery in the Eastern Aleutian District and the Bering Sea subarea for vessels participating in the BSAI trawl limited access fishery to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until November 1, 2010.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 15, 2010.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–26419 Filed 10–15–10; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XZ80

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2010 Pacific total allowable catch (TAC) apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 16, 2010, through 2400 hrs, A.l.t., December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The 2010 Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA is 2,077 metric tons (mt), as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the 2010 Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,000 mt, and is setting aside the remaining 77 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 13, 2010.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 15, 2010.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–26421 Filed 10–15–10; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XZ84

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA) for 72 hours. This action is necessary to fully use the 2010 total allowable catch (TAC) of pollock specified for Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 15, 2010, through 1200 hrs, A.l.t., October 18, 2010. Comments must be received at the following address no later than 4:30 p.m., A.l.t., November 1, 2010.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648–XZ84, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov.*
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand Delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for pollock in Statistical Area 630 of the GOA under § 679.20(d)(1)(iii) on October 2, 2010 (75 FR 61638, October 6, 2010).

NMFS has determined that approximately 1,150 metric tons of pollock remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2010 TAC of pollock in Statistical Area 630, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 630 of the GOA. This will enhance the socioeconomic well-being of harvesters dependent upon pollock in this area. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of pollock by the GOA trawl sector and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels participating in this fishery.

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 72 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA effective 1200 hrs, A.l.t., October 18, 2010.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 14, 2010.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for pollock in Statistical Area 630 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until November 1, 2010.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 15, 2010.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–26422 Filed 10–15–10; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 75, No. 203
Thursday, October 21, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1039; Directorate Identifier 2010–NM–002–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

There has been numerous reported failures of the Regional Jet engine TCGB [throttle control gearbox] P/Ns: 2100140–003, 2100140–005 & 2100140–007. Some of these failures have resulted in in-flight engine shutdowns. Post incident investigations revealed that excessive wear within the engine TCGB could alter the rigging position or cause the throttle to jam. With the rigging position altered, movement of the throttle lever towards the idle position can result in throttle moving too close to the fuel shut-off position, which potentially, can cause the engine to flame out.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 6, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Rocco Viselli, Senior Aviation Safety Engineer, Avionic & Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7331; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1039; Directorate Identifier 2010–NM–002–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On March 8, 2005, we issued AD 2005–06–04, Amendment 39–14012 (70 FR 12963, March 17, 2005). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2005–06–04, the inspection for the throttle control gearbox (TCGB) required by that AD has been transcribed in a new certification maintenance requirement (CMR) task. This NPRM proposes to mandate the incorporation of the new CMR task into the CL–600–2B19 maintenance requirements manual (MRM) as introduced by the MRM temporary revision 2A–47. Transport Canada Civil Aviation, which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2004–01R2, dated September 29, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

There has been numerous reported failures of the Regional Jet engine TCGB P/Ns: 2100140–003, 2100140–005 & 2100140–007. Some of these failures have resulted in in-flight engine shutdowns. Post incident investigations revealed that excessive wear within the engine TCGB could alter the rigging position or cause the throttle to jam. With the rigging position altered, movement of the throttle lever towards the idle position can result in throttle moving too close to the fuel shut-off position, which potentially, can cause the engine to flame out.

Bombardier issued Service Bulletin (SB) 601R–76–019 dated 21 August 2003, to introduce an inspection of, and if required, replacement of the throttle control gearbox with a serviceable unit. AD CF–2004–01 was originally issued to mandate the subject inspection requirement as per SB 601R–76–019 and subsequent revisions.

The subject TCGB inspection requirements mandated as per the earlier versions of this AD, are now transcribed in a new Certification Maintenance Requirement (CMR) task. This revision is issued to

mandate the incorporation of the new CMR task into the CL–600–2B19 Maintenance Requirements Manual (MRM), as introduced by the MRM Temporary Revision (TR) 2A–47.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 601R–76–019, Revision B, dated February 16, 2005; and Service Bulletin 601R–76–019, Revision C, dated July 5, 2007. Bombardier has also issued Temporary Revision 2A–47, dated May 27, 2009, to Appendix A—Certification Maintenance Requirements, of Part 2 of the Bombardier CL–600–2B19 Maintenance Requirements Manual. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 638 products of U.S. registry.

The actions that are required by AD 2005–06–04 and retained in this proposed AD take about 7 work-hours per product. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the requirements retained in this proposed AD on U.S. operators to be $379,610, or $595 per product

We estimate that it would take about 1 work-hour per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the new basic requirements in this proposed AD on U.S. operators to be $54,230, or $85 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–14012 (70 FR 12963, March 17, 2005) and adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2010–1039; Directorate Identifier 2010–NM–002–AD.

Comments Due Date

(a) We must receive comments by December 6, 2010.

Affected ADs

(b) The AD supersedes AD 2005–06–04, Amendment 39–14012.

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, having an engine throttle control gearbox (TCGB) with part number 2100140–003, 2100140–005, or 2100140–007 installed.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (m)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 76: Engine Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

There has been numerous reported failures of the Regional Jet engine TCGB P/Ns: 2100140–003, 2100140–005 & 2100140–007. Some of these failures have resulted in in-flight engine shutdowns. Post incident investigations revealed that excessive wear within the engine TCGB could alter the rigging position or cause the throttle to jam.

With the rigging position altered, movement of the throttle lever towards the idle position can result in throttle moving too close to the fuel shut-off position, which potentially, can cause the engine to flame out.

Bombardier issued Service Bulletin (SB) 601R–76–019 dated 21 August 2003, to introduce an inspection of, and if required, replacement of the throttle control gearbox with a serviceable unit. AD CF–2004–01 was originally issued to mandate the subject inspection requirement as per SB 601R–76–019 and subsequent revisions.

The subject TCGB inspection requirements mandated as per the earlier versions of this AD, are now transcribed in a new Certification Maintenance Requirement (CMR) task. This revision is issued to mandate the incorporation of the new CMR task into the CL–600–2B19 Maintenance Requirements Manual (MRM), as introduced by the MRM Temporary Revision (TR) 2A–47.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2005–06–04, With New Service Information

Inspection

(g) For airplanes having serial numbers (S/Ns) 7003 through 7067 inclusive, and 7069 and subsequent: At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, do a detailed inspection for wear of the left and right engine throttle control gearboxes having part number (P/N) 2100140–005 or 2100140–007 by doing all the actions per Part A, paragraphs A., B., and C.(1) through C.(4), of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; or Revision C, dated July 5, 2007. If the wear value is the same as that specified in Part A, paragraph B.(8), of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; or Revision C, dated July 5, 2007: Repeat the inspection thereafter at intervals not to exceed 1,000 flight hours. As of the effective date of this AD, only Bombardier Service Bulletin 601R–76–019, Revision C, dated July 5, 2007, may be used. Doing the inspection required by paragraph (k) of this AD terminates the requirement in this paragraph.

(1) For airplanes having S/Ns 7003 through 7067 inclusive and 7069 through 7999 inclusive: Within 1,000 flight hours or 90 days after March 25, 2004 (the effective date of AD 2004–05–12), whichever is later.

(2) For airplanes having S/Ns 8000 and subsequent: Within 1,000 flight hours or 90 days after April 1, 2005 (the effective date of AD 2005–06–04), whichever is later.

Note 2: For the purposes of this AD, a detailed inspection is: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Action

(h) If the wear value found during any inspection required by paragraph (g) of this AD is not the same as that specified in Part A, paragraph B.(8), of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; or Revision C, dated July 5, 2007: Do the applicable actions required by paragraph (h)(1), (h)(2), or (h)(3) of this AD, at the time specified, per the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; or Revision C, dated July 5, 2007. Repeat the inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 1,000 flight hours. As the effective date of this AD, only Bombardier Service Bulletin 601R–76–019, Revision C, dated July 5, 2007, may be used. Doing the inspection required by paragraph (k) of this AD terminates the inspection requirements of this paragraph.

(1) If the wear value on one or both of the gearboxes is the same as that specified in Part A, paragraph B.(5), of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; or Revision C, dated July 5, 2007: Before further flight, replace the affected gearbox with a new or serviceable gearbox, by doing all the actions per Part B, paragraphs D. through F.(7) of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; or Revision C, dated July 5, 2007. As the effective date of this AD, only Bombardier Service Bulletin 601R–76–019, Revision C, dated July 5, 2007, may be used.

(2) If the wear value on both the left and right gearboxes is the same as that specified in Part A, paragraph B.(6), of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; or Revision C, dated July 5, 2007: Before further flight, replace the gearbox having the higher wear value with a new or serviceable gearbox, by doing all the actions per Part B, paragraphs D. through F.(7), of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; or Revision C, dated July 5, 2007. Within 1,000 flight hours after doing the replacement, replace the other gearbox. As the effective date of this AD, only Bombardier Service Bulletin 601R–76–019, Revision C, dated July 5, 2007, may be used.

(3) If the wear value on only one gearbox is the same as that specified in Part A, paragraph B.(7), and the wear value on the other gearbox is the same as that specified in Part A, paragraph B.(8), of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; or Revision C, dated July 5, 2007: Within 1,000 flight hours after the inspection, replace the gearbox with the wear value that is the same as that specified in Part A, paragraph B.(7), with a new or serviceable gearbox. Do the replacement by doing all the actions per Part B, paragraphs D. through F.(7), of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; or Revision C, dated July 5, 2007. As the effective date of this AD, only Bombardier Service Bulletin 601R–76–019, Revision C, dated July 5, 2007, may be used.

Additional Guidance

Note 3: Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; or Revision C, dated July 5, 2007; reference Trans Digm, Inc., AeroControlex Group, Service Bulletin 2100140–007–76–04, dated July 22, 2003, as an additional source of guidance for accomplishment of the inspections and replacement.

Reporting Requirement

(i) At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD, submit a report of gearbox wear to Bombardier Aerospace, In-Service Engineering (Engine Group); fax (514) 855–7708. The report must include the airplane serial number, the number of flight hours on the airplane, and the number of flight hours on each gearbox (if different than the number of flight hours on the airplane). Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) For Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 through 7067 inclusive, and 7069 through 7999 inclusive: Submit a report within 10 days after doing the inspection required by paragraph (g) of this AD, or within 10 days after March 25, 2004, whichever is later.

(2) For Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 8000 and subsequent: Submit a report within 10 days after doing the inspection required by paragraph (g) of this AD, or within 10 days after April 1, 2005 (the effective date of AD 2005–06–04), whichever is later.

New Requirements of This AD

Actions

(j) For all airplanes: Within 30 days as the effective date of this AD, revise the Airworthiness Limitations (AWL) section of the Instructions for Continued Airworthiness to include the information in Bombardier

Temporary Revision 2A–47, dated May 27, 2009, to Appendix A—Certification Maintenance Requirements, of Part 2 of the Bombardier CL–600–2B19 Maintenance Requirements Manual.

Note 4: The actions required by paragraph (j) of this AD may be done by inserting a copy of Bombardier Temporary Revision 2A–47, dated May 27, 2009, into the AWL section of Appendix A—Certification Maintenance Requirements, of Part 2 of the Bombardier CL–600–2B19 Maintenance Requirements Manual. When this temporary revision has been included in the limitation section of the general revisions of the document, the general revisions may be inserted in the document, provided the relevant information in the general revision is identical to that in Bombardier Temporary Revision 2A–47, dated May 27, 2009.

(k) For the task identified in Bombardier Temporary Revision 2A–47, dated May 27, 2009, do the initial inspection within 1,000 flight hours after the effective date of this AD. Doing the initial inspection required by this paragraph terminates the requirements of paragraph (g) of this AD and the inspection requirements of paragraph (h) of this AD.

(l) Thereafter, except as provided by paragraph (m) of this AD, no alternative intervals may be approved for the task indentified in Bombardier Temporary Revision 2A–47, dated May 27, 2009, which requires a special detailed inspection of the throttle control gearbox for gear and rack teeth wear.

FAA AD Differences

Note 5: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(m) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(n) Refer to MCAI Canadian Airworthiness Directive CF–2004–01R2, dated September 29, 2009; Bombardier Service Bulletin 601R–76–019, Revision C, dated July 5, 2007; and Bombardier Temporary Revision 2A–47, dated May 27, 2009, to Appendix A—Certification Maintenance Requirements, of Part 2 of the Bombardier CL–600–2B19 Maintenance Requirements Manual; for related information.

Issued in Renton, Washington, on October 13, 2010.

John Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–26550 Filed 10–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1038; Directorate Identifier 2009–NM–250–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Model F.28 Mark 0070 and 0100 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During a normal walkaround check on a F28 Mark 0100 aeroplane, a large crack was discovered in the lower portion of the right (RH) MLG [main landing gear] piston. The affected MLG unit had accumulated 7909 flight cycles (FC) at the time of detection. * * *

This condition, if not detected and corrected, could lead to MLG failure, possibly resulting in loss of control of the aeroplane during the landing roll-out.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 6, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices@stork.com;* Internet *http://www.myfokkerfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1038; Directorate Identifier 2009–NM–250–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory,

economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0221, dated October 14, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> During a normal walkaround check on a F28 Mark 0100 aeroplane, a large crack was discovered in the lower portion of the right (RH) MLG [main landing gear] piston. The affected MLG unit had accumulated 7909 flight cycles (FC) at the time of detection. The piston has been sent to Goodrich, the landing gear manufacturer, for detailed investigation.
>
> This condition, if not detected and corrected, could lead to MLG failure, possibly resulting in loss of control of the aeroplane during the landing roll-out.
>
> For the reasons described above, this AD requires a one-time detailed visual inspection of the MLG pistons, the replacement of any MLG pistons on which cracks are detected, and the reporting of all findings to the aeroplane TC [type certificate] holder. The inspection results, in combination with the findings of the crack/metallurgical investigation of the cracked piston by Goodrich, will be used to determine the necessity of additional and/or more detailed inspections, or any other corrective action. This AD is considered an interim measure, and further action is likely to follow.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Fokker Services B.V. has issued Service Bulletin SBF100–32–158, dated October 2, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 6 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,530, or $255 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs" describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Fokker Services B.V.: Docket No. FAA–2010–1038; Directorate Identifier 2009–NM–250–AD.

Comments Due Date

(a) We must receive comments by December 6, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes, certificated in any category, equipped with Goodrich (formerly Menasco, Colt Industries) main landing gear (MLG) units having part number (P/N) 41050–7, 41050–8, 41050–9, 41050–10, 41050–11, 41050–12, 41050–13, 41050–14, 41050–15, 41050–16, 41060–1, 41060–2, 41060–3, 41060–4, 41060–5, or 41060–6.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During a normal walkaround check on a F28 Mark 0100 aeroplane, a large crack was discovered in the lower portion of the right (RH) MLG piston. The affected MLG unit had accumulated 7909 flight cycles (FC) at the time of detection. The piston has been sent to Goodrich, the landing gear manufacturer, for detailed investigation.

This condition, if not detected and corrected, could lead to MLG failure, possibly resulting in loss of control of the aeroplane during the landing roll-out.

For the reasons described above, this AD requires a one-time detailed visual inspection of the MLG pistons, the replacement of any MLG pistons on which cracks are detected, and the reporting of all findings to the aeroplane TC [type certificate] holder. The inspection results, in combination with the findings of the crack/metallurgical investigation of the cracked piston by Goodrich, will be used to determine the necessity of additional and/or more detailed inspections, or any other corrective action. This AD is considered an interim measure, and further action is likely to follow.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection

(g) Within 30 days after the effective day of this AD, do a detailed visual inspection for cracks of the MLG pistons, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–158, dated October 2, 2009.

(h) If any cracked MLG piston is found during the inspection required by paragraph (g) of this AD, before further flight replace the affected piston with a serviceable part, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–158, dated October 2, 2009.

(i) At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD, report the inspection results (including no findings) to Fokker Services B.V. by using the Questionnaire provided in Fokker Service Bulletin SBF100–32–158, dated October 2, 2009.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The applicability of the MCAI includes MLG part number (P/N) 41050–6, which is not an affected part. P/N 41060–6, however, is an affected part, and is included in the applicability of this AD.

Other FAA AD Provisions

(j) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–227–1137; fax 425–227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(k) For related information, refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0221, dated October 14, 2009; and Fokker Service Bulletin SBF100–32–158, dated October 2, 2009.

Issued in Renton, Washington, on October 13, 2010.

John Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–26561 Filed 10–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0771; Airspace Docket No. 10–AGL–12]

Proposed Amendment of Class E Airspace; Mansfield, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Mansfield, OH. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Mansfield Lahm Regional Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before December 6, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0771/Airspace Docket No. 10–AGL–12, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0771/Airspace Docket No. 10–AGL–12." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking

documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking 202–267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend title 14, Code of Federal Regulations (14 CFR), part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs at Mansfield Lahm Regional Airport, Mansfield, OH. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the U.S. Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Mansfield Lahm Regional Airport, Mansfield, OH.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9U Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Mansfield, OH [Amended]

Mansfield, Mansfield Lahm Regional Airport, OH
(Lat. 40°49′17″ N., long. 82°31′00″ W.)
Galion, Galion Municipal Airport, OH
(Lat. 40°45′12″ N., long. 82°43′26″ W.)
Shelby, Shelby Community Airport, OH
(Lat. 40°52′22″ N., long. 82°41′51″ W.)
Willard, Willard Airport, OH
(Lat. 41°02′20″ N., long. 82°43′28″ W.)
Mansfield VORTAC
(Lat. 40°52′07″ N., long. 82°35′28″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Mansfield Lahm Regional Airport, and within a 6.3-mile radius of Galion Municipal Airport, and within a 6.3-mile radius of Shelby Community Airport, and within a 6.3-mile radius of Willard Airport, and within 4 miles each side of the 137° bearing from Mansfield Lahm Regional Airport extending from the 6.9-mile radius to 11.1 miles southeast of the airport, and within 4 miles each side of the 317° bearing from Mansfield Lahm Regional Airport extending from the 6.9-mile radius to 10.7 miles northwest of the airport, and within 4 miles each side of the 047° bearing from Mansfield Lahm Regional Airport extending from the 6.9-mile radius to 11.2 miles northeast of the airport, and within 4 miles each side of the 227° bearing from Mansfield Lahm Regional Airport extending from the 6.9-mile radius to 10.9 miles southwest of the airport, and within 6.1 miles each side of the Mansfield VORTAC 307° radial extending from the 6.9-mile radius to 13.3 miles northwest of the VORTAC, and within 4.4 miles each side of the Mansfield VORTAC 130° radial extending from the 6.9-mile radius to 13.8 miles southeast of the VORTAC.

Issued in Fort Worth, TX, on October 6, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–26528 Filed 10–20–10; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0770; Airspace Docket No. 10–AGL–11]

Proposed Amendment of Class E Airspace; Columbus, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace in the Columbus, OH area. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Port Columbus International Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: 0901 UTC. Comments must be received on or before December 6, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0770/Airspace Docket No. 10–AGL–11, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0770/Airspace Docket No. 10–AGL–11." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking 202–267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend title 14, Code of Federal Regulations (14 CFR), part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs at Port Columbus International Airport, Columbus, OH. The addition of the RNAV (RNP) Z RWY 28R SIAP at the airport has created the need to extend Class E airspace to the east of the existing controlled airspace. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the U.S. Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace in the Columbus, OH area.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Columbus, OH (Amended)

Columbus, Port Columbus International Airport, OH
(Lat. 39°59′53″ N., long. 82°53′31″ W.)
Columbus, Rickenbacker International Airport, OH
(Lat. 39°48″50″ N., long. 82°55′40″ W.)
Columbus, Ohio State University Airport, OH
(Lat. 40°04′47″ N., long. 83°04′23″ W.)
Columbus, Bolton Field Airport, OH
(Lat. 39°54′04″ N., long. 83°08′13″ W.)
Columbus, Darby Dan Airport, OH
(Lat. 39°56′31″ N., long. 83°12′18″ W.)
Lancaster, Fairfield County Airport, OH
(Lat. 39°45′20″ N., long. 82°39′26″ W.)
Don Scott NDB
(Lat. 40°04′49″ N., long. 83°04′44″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Port Columbus International Airport, and within 3.3 miles either side of the 094° bearing from Port Columbus International Airport extending from the 7-mile radius to 12.1 miles east of the airport, and within a 7-mile radius of Rickenbacker International Airport, and within 4 miles either side of the 045° bearing from Rickenbacker International Airport extending from the 7-mile radius area to 12.5 miles northeast of the airport, and within a 6.5-mile radius of the Ohio State University Airport, and within 3 miles either side of the 091° bearing from the Don Scott NDB extending from the 6.5-mile radius area to 9.8 miles east of the NDB, and within a 7.4-mile of Bolton Field Airport, and within a 6.4-mile radius of Fairfield County Airport,

and within a 6.5-mile radius of Darby Dan Airport, excluding that airspace within the London, OH, Class E airspace area.

Issued in Fort Worth, TX, on October 6, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–26529 Filed 10–20–10; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0841; Airspace Docket No. 10–ACE–11]

Proposed Amendment of Class E Airspace; Johnson, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Johnson, KS. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Stanton County Municipal Airport. Minor adjustments to geographic coordinates also would be made. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before December 6, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0841/Airspace Docket No. 10–ACE–11, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0841/Airspace Docket No. 10–ACE–11." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking 202–267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs at Stanton County Municipal Airport, Johnson, KS. Controlled airspace is needed for the safety and management of IFR operations at the airport. Adjustments to the geographic coordinates for the airport also would be made in accordance with the FAA's National Aeronautical Navigation Services.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Stanton County Municipal Airport, Johnson, KS.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9U Airspace Designations and Reporting Points, signed August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Johnson, KS [Amended]

Stanton County Municipal Airport, KS
(Lat. 37°35′07″ N., long. 101°43′56″ W.)
Bear Creek NDB
(Lat. 37°38′08″ N., long. 101°44′05″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Stanton County Municipal Airport, and within 8 miles west and 4 miles east of the Bear Creek NDB 358° bearing extending from the 6.6-mile radius to 16 miles north of the NDB.

Issued in Fort Worth, TX, on October 6, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–26530 Filed 10–20–10; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0769; Airspace Docket No. 10–ACE–9]

Proposed Amendment of Class E Airspace; Farmington, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Farmington, MO. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Farmington Regional Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: 0901 UTC. Comments must be received on or before December 6, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0769/Airspace Docket No. 10–ACE–9, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd, Fort Worth, TX 76137; telephone: 817–321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0769/Airspace Docket No. 10–ACE–9." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking 202–267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend title 14, Code of Federal Regulations (14 CFR), part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs at Farmington Regional Airport, Farmington, MO. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more

detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Farmington Regional Airport, Farmington, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Farmington, MO [Amended]

Farmington Regional Airport, MO
(Lat. 37°45′40″ N., long. 90°25′43″ W.)
Farmington VORTAC
(Lat. 37°40′24″ N., long. 90°14′03″ W.)
Perrine NDB
(Lat. 37°45′50″ N., long. 90°25′43″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Farmington Regional Airport, and within 4 miles each side of the 204° bearing from the airport extending from the 6.4-mile radius to 11.5 miles southwest of the airport, and within 2.6 miles each side of the 034° bearing from the Perrine NDB extending from the 6.4-mile radius to 7.9 miles northeast of the airport, and within 1.3 miles each side of the Farmington VORTAC 300° radial extending from the 6.4-mile radius of the airport to the VORTAC.

Issued in Fort Worth, TX on October 6, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–26581 Filed 10–20–10; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0937; Airspace Docket No. 10–ASO–35]

Proposed Amendment of Class E Airspace; Henderson, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Henderson, KY, as the Geneva Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures (SIAPs) have been developed at Henderson City-County Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before December 6, 2010.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2010–0937; Airspace Docket No. 10–ASO–35, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2010–0937; Airspace Docket No. 10–ASO–35) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Comments wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0937; Airspace Docket No. 10–ASO–35." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface to support new SIAPs developed at Henderson City-County Airport, Henderson, KY. Airspace reconfiguration is necessary due to the decommissioning of the Geneva NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in subtitle VII, part, A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class E airspace at Henderson City-County Airport, Henderson, KY.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, effective September 15, 2010, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO KY E5 Henderson, KY [Amended]

Henderson City-County Airport, KY
(Lat. 37°48′28″ N., long. 87°41′09″ W.)
Pocket City VORTAC, Evansville, IN
(Lat. 37°55′42″ N., long. 87°45′45″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Henderson City-County Airport and within 1.0 miles each side of the 153° radial from the Pocket City VORTAC extending from the 6.5-mile radius to 8.2 miles southeast of the VORTAC.

Issued in College Park, Georgia, on October 12, 2010.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–26567 Filed 10–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0837; Airspace Docket No. 10–ACE–10]

Proposed Establishment of Class E Airspace; Central City, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Central City, NE. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Central City Municipal—Larry Reineke Field Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: Comments must be received on or before December 6, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0837/Airspace Docket No. 10–ACE–10, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0837/Airspace Docket No. 10–ACE–10." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend title 14, Code of Federal Regulations (14 CFR), part 71 by establishing Class E airspace extending upward from 700 feet above the surface for SIAPs operations at Central City Municipal—Larry Reineke Field Airport, Central City, NE. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010 and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the U.S. Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Central City Municipal—Larry Reineke Field Airport, Central City, NE.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Central City, NE [New]

Central City Municipal—Larry Reineke Field Airport, IL
(Lat. 41°06′42″ N., long. 98°03′05″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Central City Municipal—Larry Reineke Field Airport.

Issued in Fort Worth, TX, on September 27, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–26570 Filed 10–20–10; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0772; Airspace Docket No. 10–ASW–10]

Proposed Revocation of Class E Airspace; Lone Star, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove Class E airspace at Lone Star, TX. Abandonment of the former Lone Star Steel Company Airport and cancellation of all Standard Instrument Approach Procedures (SIAPs) has eliminated the need for controlled airspace in the Lone Star, TX, area. The FAA is taking this action to ensure the efficient use of airspace within the National Airspace System.

DATES: Comments must be received on or before December 6, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0772/Airspace Docket No. 10–ASW–10, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0772/Airspace Docket No. 10–ASW–10." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by removing the Class E airspace extending upward from 700 feet above the surface at the former Lone Star Steel Company Airport, Lone Star, TX. The airport has been abandoned and all SIAPs have been cancelled, therefore, controlled airspace is no longer needed for the safety and management of IFR operations.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the U.S. Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would remove controlled airspace at the former Lone Star Steel Company Airport, Lone Star, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9U, Airspace Designations and Reporting Points, signed August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 6005 Class E Airspace extending upward from 700 feet above the surface.

* * * * *

ASW TX E5 Lone Star, TX [Removed]

Issued in Fort Worth, TX, on October 6, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–26533 Filed 10–20–10; 8:45 am]

BILLING CODE 4901–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2010–0415; FRL–9210–2]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to a State Implementation Plan (SIP) submitted by the state of Missouri. The purpose of this revision is to update the Springfield City Code and is part of ongoing SIP maintenance to assure that outdated local codes and ordinances do not remain in the SIP. The revision reflects updates to the Missouri statewide rules, and will ensure consistency between the applicable local agency rules and the Federally approved rules.

DATES: Comments on this proposed action must be received in writing by November 22, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2010–0415, by mail to Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Lachala Kemp at (913) 551–7214, or by e-mail at *kemp.lachala@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register,** EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this is a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comments on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register.**

Dated: September 22, 2010.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2010–24920 Filed 10–20–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257, 261, 264, 265, 268, 271, and 302

[EPA–HQ–RCRA–2009–0640; FRL–9216–3]

RIN 2050–AE81

Notice of Data Availability on Coal Combustion Residual Surface Impoundments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: This document announces the availability of new information and data posted in the docket for EPA's proposed rulemaking (75 FR 51434, August 20, 2010) on the Disposal of Coal Combustion Residuals from Electric Utilities. The Agency is seeking public comment on how, if at all, this additional information should affect the Agency's decisions as it develops a final rule. The information has been posted on EPA's Web site, and is now currently available in the docket; it consists of responses to Information Collection Requests that EPA sent to electric utilities on their coal combustion residual surface impoundments as well as reports and materials related to the site assessments EPA has conducted on a subset of these impoundments.

DATES: Submit comments on or before November 19, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2009–0640, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov,* Attention Docket ID No. EPA–HQ–RCRA–2009–0640. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.
- *Fax:* Comments may be faxed to 202–566–9744; Attention Docket ID No. EPA–HQ–RCRA–2009–0640.
- *Mail:* Send your comments to the Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities Docket, Attention Docket ID No., EPA–HQ–RCRA–2009–0640, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* Deliver two copies of your comments to the Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities Docket, Attention Docket ID No., EPA–HQ–RCRA–2009–0640, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2009–0640. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–0270.

The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Jim Kohler, Office of Resource Conservation and Recovery (5304P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, telephone (703) 347–8953, e-mail address *kohler.james@epa.gov.* For more information on this rulemaking, please visit *http://www.epa.gov/coalashrule.*

SUPPLEMENTARY INFORMATION:

I. What should I consider as I prepare my comments for EPA?

1. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

2. *Docket Copying Costs.* The first 100-copied pages are free. Thereafter, the charge for making copies of Docket materials is 15 cents per page.

II. How should I submit CBI to the agency?

Do not submit information that you consider to be CBI electronically through *http://www.regulations.gov* or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Resource Conservation and Recovery (5305P), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–RCRA–2009–0640. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on a disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed, except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on a disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please contact: LaShan Haynes, Office of Resource Conservation and Recovery (5305P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, telephone (703) 605–0516, e-mail address *haynes.lashan@epa.gov.*

III. Coal Combustion Residual Surface Impoundment Information

A. Background on Information Collection Request Responses

After the failure of the coal combustion residual (CCR) surface impoundment at the Tennessee Valley Authority's Kingston facility in December 2008, EPA undertook an effort to assess the structural integrity of the other CCR surface impoundments. This effort had three components: (1) An Information Collection Request (ICR#2020–0003) that was sent to facilities known to have surface impoundments or similar management units asking for specific information on the structural stability of those units; (2) on-site assessments of the structural integrity of these units; and (3) reports and recommendations for actions at the facility. EPA is still in the process of completing these assessments; however, EPA is placing the data that are currently available in the docket for the rulemaking, and is soliciting public comment on these data in connection with this rulemaking.

EPA sent Information Collection Requests in March, April and December of 2009 to electric utilities that have surface impoundments or similar management units that contain CCRs. All of the responses covering 228 facilities and 629 surface impoundments and similar management units are currently posted in the docket. (**Note:** These responses have been posted on EPA's Web site since they have been received by the Agency. Thus, these responses have already been publicly available.) The 228 facilities that responded to EPA's information collection request have 629 surface impoundments and similar management units; 200 units (32 percent) have been given a hazard potential rating using the U.S. Army Corps of Engineers National Inventory of Dams criteria. Of the 200 units that have been rated, 50 units (25 percent) are rated as having a High Hazard Potential; 71 units (36 percent) are rated as having a Significant Hazard Potential; 71 units (36 percent) are rated as having a Low Hazard Potential; and 8 units (4 percent) are rated as having a Less than Low Hazard Potential. 429 units (68 percent) have not received a hazard potential rating. The hazard potential ratings do not assess the stability of these units; rather, the ratings assess the potential for loss of life or environmental and economic damage. Units rated as having a High Potential Hazard are those where failure will probably cause loss of life.

Of the 629 surface impoundments and similar units covered in these responses, 443 (70 percent) were designed by a professional engineer. The units show considerable variation in height, with 80 units (13 percent) being reported as greater than 50 feet in height; 133 units (21 percent) being reported as greater than 25 feet, but less than 51 feet in height; 268 units (43 percent) being reported as greater than 6 feet, but less than 26 feet in height; 39 units (6 percent) being reported as greater than 0 feet, but less than 7 feet in height; and 105 units (17 percent) being reported as having no height.

A majority of the information contained in the company responses has been inserted into a database. All the fields and entries in this database have been extracted and posted in the docket as PDF and Microsoft Excel spreadsheets which enable users to easily search for aggregate or facility-specific information.

B. Background on CCR Impoundment Assessment Information

As part of EPA's ongoing national effort to assess the management of CCRs, EPA has assessed the structural integrity of many impoundments and similar management units containing CCRs at electric utilities. This effort is still ongoing; however, EPA is making available for comment those 53 assessment reports that have been

finalized. Most of the impoundments that have been assessed have a "high" or "significant" hazard potential rating. As mentioned above, the hazard potential rating is not related to the stability of these impoundments, but to the potential for harm should the impoundment fail. For example, a "significant" hazard potential rating means impoundment failure can cause economic loss, environmental damage, or damage to infrastructure.

The assessment reports being placed into the docket have been completed by contractors who are experts in the area of dam integrity, reflect the best professional judgment of the engineering firm, and are signed and stamped by a professional engineer who is licensed in the state in which the impoundment is located. The reports are based on a visual assessment of the site, interviews with site personnel, and the review of geotechnical reports and studies related to the design, construction and operation of these impoundments, if available. The engineering firms also reviewed past state/federal inspections of the impoundments. EPA's contractors were not authorized to conduct any physical drilling, coring or sampling while on site; however, they did review studies which may have included such information. Also, the contractors were asked to rate the impoundments as "satisfactory," "fair," "poor," or "unsatisfactory," terms commonly used in the field of dam safety. Only impoundments rated as "unsatisfactory" pose immediate safety threats. None of the impoundments assessed so far have received an "unsatisfactory" rating. Impoundment ratings noted in the reports should be taken in the proper context, since a unit may be found to be structurally sound, while it may receive a "fair" or "poor" rating based on other factors such as lack of information. These condition ratings are different than the hazard potential ratings described above because they are related to the stability of the individual impoundment as assessed through a field inspection and available information on the impoundment.

Draft copies of these reports have been reviewed by the facilities and the states for factual accuracy and their comments on the draft reports have also been placed in the docket and posted to EPA's Web site. EPA continues to review the reports and the technical recommendations, and is working with the facilities to ensure that the recommendations are implemented.

EPA has provided a copy of the final report to each facility and has requested that the facility implement the recommendations in the reports and develop plans for taking action. The action plans that have been completed also have been placed in the docket along with the draft assessment reports, comments on the draft reports, and the final assessment reports. (**Note:** These reports and action plans have been posted on EPA's Web site since they have been received by the Agency. Thus, these reports and action plans have already been publicly available.) Additional action plans will be posted to EPA's Web site as they become available (but in the absence of further EPA action, will not be considered part of the rulemaking record). Should facilities fail to take sufficient measures, EPA will take additional action, if the circumstances warrant, and will be devoting special attention to those facilities receiving a "poor" or "unsatisfactory" rating.

Some companies have claimed that certain information they have provided to EPA related to their coal ash impoundments is CBI. While EPA reviews these claims, the information that is claimed as CBI is redacted (removed) from the coal ash reports. If these claims are accepted by EPA, the information will remain redacted. If EPA denies these claims, the information will be made publicly available and posted to EPA's Web site.

C. Conclusion

The Agency solicits comments on this information, including the extent to which both the CCR surface impoundment information collection request responses and assessment materials on the structural integrity of these impoundments should be factored into EPA's final rule on the Disposal of Coal Combustion Residuals from Electric Utilities.

Dated: October 13, 2010.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 2010–26657 Filed 10–20–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2010–0634, EPA–HQ–SFUND–2010–0636, EPA–HQ–SFUND–2010–0638, EPA–HQ–SFUND–2010–0639, EPA–HQ–SFUND–2010–0640, EPA–HQ–SFUND–2010–0641, EPA–HQ–SFUND–2010–0643, EPA–HQ–SFUND–2010–0645, EPA–HQ–SFUND–2010–0646, EPA–HQ–SFUND–2010–0647; FRL–9216–1]

RIN 2050–AD75

National Priorities List, Proposed Rule No. 53

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add nine sites to the General Superfund section of the NPL. This rule also withdraws one site from proposal to the General Superfund section of the NPL.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before December 20, 2010.

ADDRESSES: Identify the appropriate Docket Number from the table below.

DOCKET IDENTIFICATION NUMBERS BY SITE:

Site name	City/County, State	Docket ID No.
GBF, Inc., Dump	Antioch, CA	EPA–HQ–SFUND–2010–0647
Armstrong World Industries	Macon, GA	EPA–HQ–SFUND–2010–0640
Dwyer Property Ground Water Plume	Elkton, MD	EPA–HQ–SFUND–2010–0639

DOCKET IDENTIFICATION NUMBERS BY SITE:—Continued

Site name	City/County, State	Docket ID No.
Washington County Lead District—Furnace Creek	Caledonia, MO	EPA–HQ–SFUND–2010–0646
Horton Iron and Metal	Wilmington, NC	EPA–HQ–SFUND–2010–0641
Mansfield Trail Dump	Byram Township, NJ	EPA–HQ–SFUND–2010–0634
Milford Contaminated Aquifer	Milford, OH	EPA–HQ–SFUND–2010–0643
Cabo Rojo Ground Water Contamination	Cabo Rojo, PR	EPA–HQ–SFUND–2010–0638
Hormigas Ground Water Plume	Caguas, PR	EPA–HQ–SFUND–2010–0636
West County Road 112 Ground Water	Midland, TX	EPA–HQ–SFUND–2010–0645

Submit your comments, identified by the appropriate Docket number, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- E-mail: *superfund.docket@epa.gov.*
- *Mail:* Mail comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5305T); 1200 Pennsylvania Avenue, NW.; Washington, DC 20460.
- *Hand Delivery or Express Mail:* Send comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue, NW.; EPA West, Room 3334, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays).

Instructions: Direct your comments to the appropriate Docket number (see table above). EPA's policy is that all comments received will be included in the public Docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system; that means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public Docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional Docket addresses and further details on their contents, see section II, "Public Review/Public Comment," of the Supplementary Information portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (703) 603–8852, e-mail: *jeng.terry@epa.gov,* Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (mail code 5204P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action." "Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites that are owned or operated by other Federal agencies (the "Federal Facilities Section"). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System ("HRS") score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions * * *." 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe

the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the "Jones Co. plant site") in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.,* where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination and is not meant to constitute any determination of liability at a site. For example, the name "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the Remedial Investigation ("RI") "is a process undertaken * * * to determine the nature and extent of the problem presented by the release" as more information is developed on site contamination, and which is generally performed in an interactive fashion with the Feasibility Study ("FS") (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the Agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the construction completion list (CCL)?

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.,* institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund/cleanup/ccl.htm.*

J. What is the sitewide ready for anticipated use measure?

The Sitewide Ready for Anticipated Use measure (formerly called Sitewide Ready-for-Reuse) represents important Superfund accomplishments and the measure reflects the high priority EPA places on considering anticipated future land use as part of our remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment, including current and future land users, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *http://www.epa.gov/superfund/programs/recycle/tools/index.html.*

II. Public Review/Public Comment

A. May I review the documents relevant to this proposed rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this proposed rule are contained in public Dockets located both at EPA Headquarters in Washington, DC, and in the Regional offices. These documents are also available by electronic access at *http://www.regulations.gov* (see instructions in the **ADDRESSES** section above).

B. How do I access the documents?

You may view the documents, by appointment only, in the Headquarters or the Regional Dockets after the publication of this proposed rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional Dockets for hours.

The following is the contact information for the EPA Headquarters Docket: Docket Coordinator, Headquarters; U.S. Environmental

Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue, NW.; EPA West, Room 3334, Washington, DC 20004; 202/566–0276. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional Dockets is as follows:

Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1417.

Ildefonso Acosta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4344.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., Mail code 9T25, Atlanta, GA 30303; 404/562–8862.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SMR–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/353–5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mailcode 6SFTS, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Mailcode SUPRERNB, Kansas City, KS 66101; 913/551–7335.

Sabrina Forrest, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303/312–6484.

Karen Jurist, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD–9–1, San Francisco, CA 94105; 415/972–3219.

Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mailcode ECL–112, Seattle, WA 98101; 206/463–1349.

You may also request copies from EPA Headquarters or the Regional Dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents. Please note that due to the difficulty of reproducing oversized maps, oversized maps may be viewed only in-person; since EPA dockets are not equipped to either copy and mail out such maps or scan them and send them out electronically.

You may use the Docket at *http://www.regulations.gov* to access documents in the Headquarters Docket (see instructions included in the **ADDRESSES** section above). Please note that there are differences between the Headquarters Docket and the Regional Dockets and those differences are outlined below.

C. What documents are available for public review at the headquarters docket?

The Headquarters Docket for this proposed rule contains the following for the sites proposed in this rule: HRS score sheets; Documentation Records describing the information used to compute the score; information for any sites affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What documents are available for public review at the regional dockets?

The Regional Dockets for this proposed rule contain all of the information in the Headquarters Docket plus the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional Dockets.

E. How do I submit my comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the mailing addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What happens to my comments?

EPA considers all comments received during the comment period. Significant comments are typically addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What should I consider when preparing my comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas,* 849 F.2d 1516 (DC Cir. 1988)). EPA will not address voluminous comments that are not referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. May I submit comments after the public comment period is over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of generally not delaying a final listing decision solely to accommodate consideration of late comments.

I. May I view public comments submitted by others?

During the comment period, comments are placed in the Headquarters Docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the Regional Dockets approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper, will be made available for public viewing in the electronic public Docket at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Once in the public Dockets system, select "search," then key in the appropriate Docket ID number.

J. May I submit comments regarding sites not currently proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the Docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

In today's proposed rule, EPA is proposing to add nine sites to the General Superfund section of the NPL. All of the sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above. The sites are presented in the tables below.

GENERAL SUPERFUND SECTION

State	Site name	City/county
GA	Armstrong World Industries	Macon.
MD	Dwyer Property Ground Water Plume	Elkton.
MO	Washington County Lead District—Furnace Creek	Caledonia.
NC	Horton Iron and Metal	Wilmington.
NJ	Mansfield Trail Dump	Byram Township.
OH	Milford Contaminated Aquifer	Milford.
PR	Cabo Rojo Ground Water Contamination	Cabo Rojo.
PR	Hormigas Ground Water Plume	Caguas.
TX	West County Road 112 Ground Water	Midland.

B. Withdrawal of Site From Proposal to the NPL

EPA is withdrawing the proposal to add the GBF, Inc. Dump site in Antioch, California, to the NPL, because the California Department of Toxic Substances Control has been, and will continue to be, the lead agency overseeing the site cleanup pursuant to a California consent order. Cleanup is progressing successfully and no further EPA actions are necessary. The proposed rule can be found at 57 FR 4824 (February 7, 1992). Refer to the Docket ID Number EPA–HQ–SFUND–2010–0647 for supporting documentation regarding this action.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What is Executive Order 12866?

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

2. Is this proposed rule subject to Executive Order 12866 review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act Apply to this proposed rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

1. What is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How has EPA complied with the Regulatory Flexibility Act?

This proposed rule listing sites on the NPL, if promulgated, would not impose any obligations on any group, including small entities. This proposed rule, if promulgated, also would establish no standards or requirements that any small entity must meet, and would impose no direct costs on any small entity. Whether an entity, small or

otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this proposed rule, if promulgated, would not impose any requirements on any small entities. For the foregoing reasons, I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Does UMRA apply to this proposed rule?

This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Proposing a site on the NPL does not itself impose any costs. Proposal does not mean that EPA necessarily will undertake remedial action. Nor does proposal require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of proposing a site to be placed on the NPL. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As is mentioned above, site proposal does not impose any costs and would not require any action of a small government.

E. Executive Order 13132: Federalism

1. What is Executive Order 13132?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

2. Does Executive Order 13132 apply to this proposed rule?

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not contain any requirements applicable to States or other levels of government. Thus, the requirements of the Executive Order do not apply to this proposed rule.

EPA believes, however, that this proposed rule may be of significant interest to State governments. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA therefore consulted with State officials and/or representatives of State governments early in the process of developing the rule to permit them to have meaningful and timely input into its development. All sites included in this proposed rule were referred to EPA by States for listing. For all sites in this rule, EPA received letters of support either from the Governor or a State official who was delegated the authority by the Governor to speak on their behalf regarding NPL listing decisions.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

1. What is Executive Order 13175?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes."

2. Does Executive Order 13175 apply to this proposed rule?

This action does not have tribal implications, as specified in Executive Order 13175. Proposing a site to the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

1. What is Executive Order 13045?

Executive Order 13045: "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of

the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

2. Does Executive Order 13045 apply to this proposed rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage

1. What is Executive Order 13211?

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355 (May 22, 2001)) requires Federal agencies to prepare a "Statement of Energy Effects" when undertaking certain regulatory actions. A Statement of Energy Effects describes the adverse effects of a "significant energy action" on energy supply, distribution and use, reasonable alternatives to the action, and the expected effects of the alternatives on energy supply, distribution and use.

2. Does Executive Order 13211 apply to this proposed rule?

This action is not a "significant energy action" as defined in Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy impacts because proposing a site to the NPL does not require an entity to conduct any action that would require energy use, let alone that which would significantly affect energy supply, distribution, or usage. Thus, Executive Order 13175 does not apply to this action.

I. National Technology Transfer and Advancement Act

1. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act apply to this proposed rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

1. What Is Executive Order 12898?

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

2. Does Executive Order 12898 apply to this rule?

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As this rule does not impose any enforceable duty upon State, tribal or local governments, this rule will neither increase nor decrease environmental protection.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: October 14, 2010.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 2010–26461 Filed 10–20–10; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 75, No. 203
Thursday, October 21, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0078]

Availability of an Environmental Assessment for a Biological Control Agent for Hawkweeds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment relative to the control of hawkweeds (*Hieracium* spp.). The environmental assessment considers the effects of, and alternatives to, the release of the hawkweed gall wasp, *Aulacidea subterminalis,* into the continental United States as a biological control agent to reduce the severity of infestations of hawkweeds. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before November 22, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2010–0078* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0078, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0078.

Reading Room: You may read any comments that we receive on the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Shirley A. Wager-Page, Chief, Pest Permitting Branch, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1237; (301) 734–8453.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for the release of the hawkweed gall wasp, *Aulacidea subterminalis,* into the continental United States for the biological control of hawkweeds (*Hieracium pilosella, H. aurantiacum, H. floribundum,* and *H. flagellare*).

Introduced hawkweeds are native to Europe and were probably introduced into the eastern United States during the 1800s. Introduced hawkweeds are highly competitive and relatively free of insects and pathogens in North America. These species outcompete native and desirable vegetation, limiting economic use of infested land and posing risks to threatened, endangered, and sensitive species.

Hawkweeds can be controlled through the application of chemical herbicides, mowing, cultural control, and the use of biological control organisms. The use of herbicides, while effective, is limited to relatively accessible sites and control is only temporary. Broadcast applications of herbicides could also have adverse impacts on nontarget vegetation if not carefully applied. Mowing prevents seed production but encourages faster vegetative spread. Cultural control includes the use of fertilizers to increase the competitive ability of more desirable species, but has no effect on dense patches of hawkweed. Currently, no organisms for the biological control of hawkweeds have been released in North America. Gall wasps cause abnormal outgrowths (galls) to form on hawkweeds. Under certain conditions, these galls may stress the plant, reducing competitive ability, seed production, and long-distance spread, which may result in a long-term, non-damaging method to control hawkweed.

Thus, a permit application has been submitted to APHIS for the purpose of releasing the hawkweed gall wasp, *Aulacidea subterminalis,* into the continental United States to control invasive hawkweeds. These permits would contain no special provisions or requirements concerning release procedures or mitigating measures.

APHIS' review and analysis of the proposed action are documented in detail in a draft environmental assessment (EA) titled "Field Release of the Gall Wasp, *Aulacidea subterminalis* (Hymenoptera: Cynipidae), for Biological Control of Invasive Hawkweeds (*Hieracium* spp.) in the Continental United States" (March 2010). We are making the EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The EA may be viewed on the Regulations.gov Web site or in our reading room (*see* **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the EA by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the EA when requesting copies.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 5th day of October 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–26467 Filed 10–20–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Philadelphia, PA, November 11, 2010, during the Home Depot Foundation and National Arbor Day Foundation's Partners in Community Forestry National Conference. The purpose of the Council's meeting is to discuss finalizing their annual accomplishment report, recommendations for the Secretary of Agriculture, develop the 2011 plan of work, meet with the Forest Services's new assistant director for Urban and Community Forestry, and hear public input related to urban and community forestry.

DATES: The meeting will be held on November 11, 2010, 9 a.m. to 5 p.m. or until Council business is completed.

ADDRESSES: The meeting will be held at the Lowes Hotel, 1200 Market Street, Philadelphia, PA 19107, Phone: 215–627–1200.

Written comments concerning this meeting should be addressed to Nancy Stremple, Executive Staff to National Urban and Community Forestry Advisory Council, 201 14th Street, SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151. Comments may also be sent via e-mail to *nstremple@fs.fed.us,* or via facsimile to 202–690–5792.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. Visitors are encouraged to call ahead to facilitate entry into the Forest Service building.

FOR FURTHER INFORMATION CONTACT: Mary Dempsey, Staff Assistant to National Urban and Community Forestry Advisory Council, 201 14th Street, SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, phone 202–205–1054.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Those interested in attending should contact Mary Dempsey to be placed on the meeting attendance list. Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff (201 14th Street, SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, e-mail: *nstremple@fs.fed.us*) before or after the meeting. Public input sessions will be provided at the meeting. Public comments will be compiled and provided to the Secretary of Agriculture along with the Council's recommendations.

Dated: October 14, 2010.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 2010–26513 Filed 10–20–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Upper Rio Grande Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Upper Rio Grande Resource Advisory Committee will meet in Monte Vista, Colorado. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to review and recommend project proposals to be funded with Title II money.

DATES: The meeting will be held on November 8, 2010, and will begin at 10 a.m.

ADDRESSES: The meeting will be held at the San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, Colorado. Written comments should be sent to Mike Blakeman, San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144. Comments may also be sent via e-mail to *mblakeman@fs.fed.us,* or via facsimile to 719–852–6250.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144.

FOR FURTHER INFORMATION CONTACT: Mike Blakeman, RAC coordinator, USDA, San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144; 719–852–6212; E-mail *mblakeman@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Introductions of all committee members, replacement members and Forest Service personnel; (2) Review, evaluate and recommend project proposals to be funded with Title II money; (3) Create a timeline to receive and review new project proposals and schedule the next meeting; and (4) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: October 13, 2010.

Dan S. Dallas,

Forest Supervisor.

[FR Doc. 2010–26668 Filed 10–20–10; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a planning meeting of the Utah Advisory Committee to the Commission will convene by conference call at 10 a.m. on Thursday, November 4, 2010. The purpose of this meeting is to provide a brief overview of recent Commission and regional activities, discuss civil rights issues in the state, discussion regarding the Utah Anti-Discrimination and Labor Division Audit and next steps in developing a resource directory of human rights agencies/organizations in the Salt Lake area, and a discussion on immigration.

This meeting is available to the public through the following toll-free call-in and conference ID numbers: 1–(800)

516–9896; conference ID 8334. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Evelyn Bohor of the Rocky Mountain Regional Office and TTY/TDD (303) 866–1049 by noon on November 1.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by December 4, 2010. The address is: U.S. Commission on Civil Rights, Rocky Mountain Regional Office, 999 18th Street, Suite 1380 South, Denver, CO 80202. Comments may be e-mailed to *ebohor@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, October 18, 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010–26487 Filed 10–20–10; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, October 29, 2010; 8:30 a.m. EDT.

PLACE: 624 Ninth Street, NW., Room 540, Washington, DC 20425.

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda.
II. Program Planning.
- Approval of New Black Panther Party Enforcement Report.
- Consideration of Findings and Recommendations for Briefing Report on English-Only in the Workplace.
- Consideration of Policy on Commissioner Statements and Rebuttals.
- Update on Sex Discrimination in Liberal Arts College Admissions—Some of the discussion of this agenda item may be held in closed session.
- Update on Clearinghouse Project.

III. State Advisory Committee Issues.
- Kentucky SAC.
- Maryland SAC.
- Vermont SAC.

IV. Staff Director's Report.
V. Announcements.
VI. Approval of Minutes of October 8 Meeting.
VII. Adjourn.

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: October 19, 2010.

David Blackwood,

General Counsel.

[FR Doc. 2010–26752 Filed 10–19–10; 4:15 pm]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting cancellation.

SUMMARY: On October 12, 2010 (75 FR 63144–63145), the U.S. Commission on Civil Rights announced a business meeting to be held on Friday, October 22, 2010 at the Commission's headquarters. On Monday, October 18, 2010, the meeting was cancelled. The decision to cancel the meeting was too close in time to the date and time of the meeting for the publication of a cancellation notice to appear in advance of the scheduled meeting date. The details of the cancelled meeting are:

DATE AND TIME: Friday, October 22, 2010; 9:30 a.m. EDT.

PLACE: 624 Ninth Street, NW., Room 540, Washington, DC 20425.

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda.
II. Program Planning.
- Approval of New Black Panther Party Enforcement Report.
- Consideration of Findings and Recommendations for Briefing Report on English-Only in the Workplace.
- Consideration of Policy on Commissioner Statements and Rebuttals.
- Update on Sex Discrimination in Liberal Arts College Admissions—Some of the discussion of this agenda item may be held in closed session.
- Update on Clearinghouse Project.

III. State Advisory Committee Issues.
- Kentucky SAC.
- Maryland SAC.
- Vermont SAC.

IV. Staff Director's Report.
V. Announcements.
VI. Approval of Minutes of October 8 Meeting.
VII. Adjourn.

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: October 19, 2010.

David Blackwood,

General Counsel.

[FR Doc. 2010–26751 Filed 10–19–10; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ86

Marine Mammals; File No. 14525

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Oleg Lyamin, Ph.D., Dept. of Psychiatry, School of Medicine, University of California at Los Angeles (UCLA), 16111 Plummer St., North Hills, CA 91343, has applied in due form for a permit to

import specimens of northern fur seals (*Callorhinus ursinus*) for scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before November 22, 2010.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 14525 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov*. Please include File No. 14525 in the subject line of the e-mail comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to import biological samples from 10 subadult male fur seals over a five-year period for studies on mechanisms of sleep in fur seals. Fur seals will be captured in Russia, held in captivity, sampled while in captivity, and euthanized at the termination of study to obtain their brains. Whole brains and brain tissues will be imported to the U.S. for anatomical and immunohistochemical studies. The first aim of the project is to correlate the release of major neurotransmitters in the brain of the fur seal during sleep and waking using microdialysis, high-performance liquid chromatography and radioimmunoassay analysis. The second aim of the study is to localize the distribution of the above mentioned cell groups in the fur seal brain as well as to localize the positions of the sites where the microdialysis samples were collected. Samples would be imported from Russia to UCLA for analysis and samples would be exported from the U.S. to South Africa for additional analysis.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register,** NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 15, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–26648 Filed 10–20–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 101014509–0508–01]

RIN 0648–XZ62

Notice of Availability of Draft Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions for Public Review and Comment

AGENCY: Office of General Counsel (OGC), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) announces the availability of a draft Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (Penalty Policy) for public review and comment.

DATES: The draft Penalty Policy will remain available for public review until December 20, 2010. To ensure that comments will be considered, NOAA must receive written comments by December 20, 2010.

ADDRESSES: Interested persons may submit comments by any of the following methods:

- *Electronic Submissions:* Submit electronic public comments via the Federal e-Rulemaking portal *http://www.regulations.gov* or *penaltypolicy@noaa.gov;*
- *Fax:* 301 427–2210; Attn: Frank Sprtel;
- *Mail:* Office of General Counsel for Enforcement and Litigation, National Oceanic and Atmospheric Administration, 8484 Georgia Avenue, Suite 400, Silver Spring, MD 20910, Attn: Frank Sprtel.

The draft Penalty Policy is available electronically at the following Web site: *http://www.nmfs.noaa.gov/ole/penaltypolicy.html.* Commenters may also request a hard copy of the draft Penalty Policy by sending a self-addressed envelope (size 8.5 x 11 inches) to the street address provided above. Comments submitted in response to this notice are a matter of public record. Before including an address, phone number, e-mail address, or other personal identifying information in a comment, please be aware that comments—including any personal identifying information—can and will be made publicly available. While a request can be made to withhold personal identifying information from public review, NOAA cannot ensure that it will be able to do so.

FOR FURTHER INFORMATION CONTACT: Frank Sprtel at the above address or by telephone at 301 495–7147.

SUPPLEMENTARY INFORMATION: The draft Penalty Policy is intended to provide guidance for the Assessment of civil administrative penalties and permit sanctions under the statutes and regulations enforced by NOAA. As explained more fully in the text of the draft Penalty Policy, the purpose of the Policy is to ensure that: (1) Civil administrative penalties and permit sanctions are assessed in accordance with the laws that NOAA enforces in a fair and consistent manner; (2) penalties and permit sanctions are appropriate for the gravity of the violation; (3) penalties and permit sanctions are sufficient to deter both particular violators and the regulated community from committing violations; (4) economic incentives for noncompliance are eliminated; and (5) compliance is expeditiously achieved and maintained to protect natural resources. Under this Policy, NOAA expects to improve consistency at a national level, provide greater predictability for the regulated community and the public, improve

transparency in enforcement, and more effectively protect natural resources.

Under the proposed penalty policy, penalties and permit sanctions are based on three criteria: (1) A base penalty amount and permit sanction reflective of the seriousness of the violation; (2) an adjustment of the base penalty and permit sanction upward or downward to reflect particular circumstances of a specific violation; and (3) an additional amount added to the adjusted base penalty to recoup the economic benefit of noncompliance. We note that the new penalty policy is a departure from NOAA's prior practice of developing detailed penalty schedules by region and by specific types of violations with broad ranges for both penalty and permit sanctions. The new policy uses a simplified approach of one penalty and permit sanction matrix for each major statute NOAA enforces, to be applied nationally, with narrower penalty and permit sanction ranges. This approach assures that NOAA attorneys are provided with greater guidance in recommending penalties, and should assure fairness and consistency of approach across NOAA statutes, across fisheries, and across the country.

When finalized, this draft Penalty Policy will supersede previous guidance regarding assessment of penalties or permit sanctions and previous penalty and permit sanction schedules issued by the NOAA Office of the General Counsel. This Penalty Policy provides guidance for the NOAA Office of the General Counsel, but does not, nor is it intended to, create a right or benefit, substantive or procedural, enforceable at law or in equity, in any person or company.

The full penalty policy, along with examples, matrixes, and schedules, can be found at *http://www.nmfs.noaa.gov/ole/penaltypolicy.html.* NOAA is seeking public comment on all portions of the penalty policy, but specifically asks for comment in the following areas: (1) The handling of recreational, versus commercial, activity in assessing penalties—specifically, whether to create separate matrixes and/or schedules for recreational activity in the penalty policy, or to leave such distinctions as an "adjustment" factor, as currently written; (2) the evaluation of prior violations in assessing penalties—specifically, whether to create upward penalty assessments based on prior charged conduct, or only to consider prior conduct that is fully adjudicated; (3) whether the proposed use of permit sanctions in the penalty policy is appropriate; (4) whether any additional upward or downward "adjustment" factors should be considered in assessing penalties under the penalty policy; (5) whether the matrixes and schedules in the penalty policy (Appendices 2 and 3), adequately reflect an appropriate range of penalties for particular violations; and (6) whether there should be any change in the proposed method of calculating economic benefit in the penalty policy.

Dated: October 15, 2010.

Lois J. Schiffer,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–26417 Filed 10–15–10; 4:15 pm]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843]

Certain Lined Paper Products From India: Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain lined paper products (CLPP) from India. For the period September 1, 2008, through August 31, 2009, we have preliminarily determined that Navneet Publications (India) Limited (Navneet) did not make sales of subject merchandise at less than normal value (NV) (*i.e.,* sales were made at *de minimis* dumping margins). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to liquidate appropriate entries without regard to antidumping duties. For the same period, we have preliminarily determined that U.S. sales have been made below NV by Super Impex. If these preliminary results are adopted in our final results, we will instruct CBP to assess antidumping duties based on the difference between the export price (EP) and NV. *See* "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* October 21, 2010.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore (Navneet) or Cindy Robinson (Super Impex) AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3692 or (202) 482–3797, respectively.

Background

On September 1, 2009, the Department issued a notice of opportunity to request an administrative review of this order for the period of review (POR) of September 1, 2008, through August 31, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 74 FR 45179 (September 1, 2009).

Pursuant to a request from the Association of American School Paper Suppliers, (petitioner),[1] the Department published in the **Federal Register** the notice of initiation of this antidumping duty administrative review with respect to 32 companies, including Navneet and Super Impex for the period September 1, 2008, through August 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 74 FR 54956 (October 26, 2009). (*Initiation Notice*). On October 26, 2009, the petitioner timely withdrew its request for a review of Blue Bird (India) Limited (Blue Bird).

On November 3, 2009, the Department notified interested parties of its intent to use CBP data for respondent selection. *See* Memorandum to The File, Through Melissa Skinner, Office Director, Office 3 and Through James Terpstra, Program Manager, Office 3 from Stephanie Moore, Case Analyst titled "Customs and Border Patrol Data for Selection of Respondents for Individual Review."

On November 10 and December 3, 2009, the Department received comments regarding respondent selection from the petitioner. On January 29, 2010, the Department selected Navneet and Super Impex as companies to be individually examined

[1] On September 30, 2009, the Department received a timely request to conduct an administrative review of the following 32 companies: Abhinav Paper Products Pvt. Ltd.; American Scholar, Inc., and/or I–Scholar; Ampoules & Vials Mfg. Co., Ltd.; Bafna Exports; Blue Bird India Ltd.; Cello International Pvt. Ltd (M/S Cello Paper Products); Creative Divya; Corporate Stationery Pvt. Ltd.; D.D International; Exmart International Pvt. Ltd.; Fatechand Mahendrakumar; FFI International; Freight India Logistics Pvt. Ltd.; International Greetings Pvt. Ltd.; Lodha Offset Limited; Magic International Pvt. Ltd.; Marigold ExIm Pvt. Ltd.; Marisa International; Navneet Publications (India) Ltd.; Paperwise Inc.; Pioneer Stationery Pvt. Ltd.; Premier Exports; Riddhi Enterprises; SAB International; SAR Transport Systems; Seet Kamal International; Solitaire Logistics Pvt. Ltd. (Eternity Int'l Freight, forwarder on behalf of Solitaire Logistics Pvt. Ltd.); Sonal Printers Pvt. Ltd.; Super Impex; Swati Growth Funds Ltd.; V & M; and Yash Laminates.

in this administrative review of the antidumping duty order on CLPP from India. *See* Memorandum to Melissa Skinner, Director, Office 3 Through James Terpstra, Program Manager, Office 3 from Stephanie Moore, Case Analyst titled "Antidumping Duty Administrative Review of Certain Lined Paper Products from India: Selection of Respondents for Individual Review" (Respondent Selection Memo), dated January 29, 2010.

On February 1, 2010, the Department issued an antidumping questionnaire (original questionnaire) to Navneet and Super Impex with a due date of March 9, 2010. On March 12, 2010, we granted a three-week extension until April 6, 2010, for Navneet to submit its response to the original questionnaire. On May 6, 2010, petitioner submitted deficiency comments regarding Navneet's April 6, 2010, original questionnaire response. On May 14, 2010, the Department issued a supplemental questionnaire to Navneet with a due date of May 28, 2010. On May 27, 2010, we granted a two-week extension until June 11, 2010, for Navneet to submit its response to the supplemental questionnaire.

With respect to Super Impex, we received Super Impex's sections A, C, and D responses to the Department's original questionnaire on March 9, March 30, and April 14, 2010, respectively. On March 25 and April 30, 2010, petitioner submitted deficiency comments on Super Impex's sections A, C, and D questionnaire response. On May 10 and June 24, 2010, we issued the first and second supplemental questionnaires, respectively, to Super Impex, and Super Impex submitted its responses on June 2 and July 7, 2010, respectively. Petitioner submitted additional deficiency comments on Super Impex's first supplemental response on July 17, 2010. On July 19, 2010, petitioner provided pre-verification comments. On July 20, 2010, petitioner provided comments on certain new factual information contained in Super Impex's second supplemental questionnaire response.

On May 18, 2010, the Department extended the time limits for the preliminary results. *See Certain Lined Paper Products from India and People's Republic of China: Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Reviews,* 75 FR 27706 (May 18, 2010).

The Department conducted the sales and cost verification of Super Impex from August 2 through August 13, 2010, in Mumbai, India. At verification, the Department's verification team requested that Super Impex provide updated sales and cost of production (COP) files to reflect the minor corrections presented to the verification team. On August 11, 2010, we received Super Impex's minor correction provided at the outset of the verification, and on August 18, 2010, we received Super Impex's revised U.S. sales and COP databases.

Period of Review

The period of review (POR) is September 1, 2008, through August 31, 2009.

Scope of the Order

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for loose leaf filler paper) including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, loose leaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8¾ inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or "tear-out" size), and are measured as they appear in the product (*i.e.,* stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- Unlined copy machine paper;
- writing pads with a backing (including but not limited to products commonly known as "tablets," "note pads," "legal pads," and "quadrille pads"), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- index cards;
- printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- newspapers;
- pictures and photographs;
- desk and wall calendars and organizers (including but not limited to such products generally known as "office planners," "time books," and "appointment books");
- telephone logs;
- address books;
- columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- lined business or office forms, including but not limited to: pre-printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- lined continuous computer paper;
- boxed or packaged writing stationary (including but not limited to products commonly known as "fine business paper," "parchment paper," and "letterhead"), whether or not containing a lined header or decorative lines;
- Stenographic pads ("steno pads"), Gregg ruled ("Gregg ruling" consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book), measuring 6 inches by 9 inches;

Also excluded from the scope of this order are the following trademarked products:

- Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and

readable only by a Fly™ pen-top computer. The product must bear the valid trademark Fly™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

• Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

• FiveStar®Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1″ wide elastic fabric band. This band is located 2⅜″ from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

• FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

Merchandise subject to this order is typically imported under headings 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Verification

As provided in section 782(i) of the Act, we have verified information provided by Super Impex in the administrative review of the order on subject merchandise from India using standard verification procedures, including the examination of relevant sales and cost information, financial records, and the selection and review of original documentation containing relevant information. Our verification results are outlined in the public version of our verification report dated October 7, 2010, which is on file in the Central Records Unit (CRU) in Room 7046 of the Department's main building.

Product Comparisons

In accordance with section 771(16) of the Tariff Act of 1930, as amended (the Act), all products produced by Navneet covered by the description in the "Scope of the Order" section above and sold in India during the POR are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on eight criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: (1) Form, (2) paper volume, (3) brightness, (4) binding type, (5) cover material, (6) back material, (7) number of inserts, and (8) insert material. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

For purposes of the preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing (VCOM) between each U.S. model and the most similar home market model selected for comparison.

Normal Value Comparisons

To determine whether sales of CLPP from Navneet to the United States were made at less than NV, we compared EP to the NV, as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transaction prices.

Export Price

For all U.S. sales made by Navneet and Super Impex, we used the EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation. We based EP on packed prices to the first unaffiliated purchaser in the United States. When appropriate, we reduced the EP prices to reflect discounts.

In accordance with section 772(c)(2)(A) of the Act, we made deductions, where appropriate, for movement expenses including foreign inland freight from plant/warehouse to the port of exportation, foreign brokerage and handling, and foreign bill of lading charges. We also increased EP by an amount equal to the countervailing duty (CVD) rate attributed to export subsidies in the most recently completed countervailing duty administrative review of CLPP from India, in accordance with section 772(c)(1)(C) of the Act.

Normal Value

Selection of Comparison Market

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Navneet's and Super Impex's volume of home market sales of the foreign like product to the volume of their U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and 773(a)(1)(C) of the Act, because Navneet had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Super Impex reported that it made no sales to the home market and that its sales to third countries were not viable. *See* Super Impex's Section A Response, dated March 9, 2010, at A–3 and A–4. Therefore, for Super Impex, we used constructed value (CV) as the basis for calculating NV, in accordance with section 773(a)(4) of the Act.

Section 773(a)(1)(C)(i) of the Act applies to the Department's determination of NV if the foreign like product is not sold (or offered for sale) for consumption in the exporting country. When sales in the home market are not viable, section 773(a)(1)(B)(ii) of the Act provides that sales to a particular third country market may be utilized if: (1) The prices in such market are representative; (2) the aggregate quantity of the foreign like product sold by the producer or exporter in the third country market is five percent or more of the aggregate quantity of the subject merchandise sold in or to the United States; and (3) the Department does not determine that a particular market situation in the third country market prevents a proper comparison with the U.S. price.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, the Department determines NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transactions. In order to perform the LOT analysis, we examine the selling functions provided to different customer categories to evaluate the LOT in a particular market. Specifically, we compare the selling functions performed for home market sales with those performed with respect to the EP or CEP transactions, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act and 19 CFR 351.412, to determine if the home market LOT constituted a different LOT than the EP or CEP LOT.

Consistent with 19 CFR 351.412, to determine whether comparison market sales were at a different LOT, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's-length) customers. If the comparison market sales were at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we will make an LOT adjustment under section 773(a)(7)(A) of the Act.

Navneet reported that it has five channels of distribution or five LOTs in the home market (*i.e.,* distributors with merchandising—full service; distributors with no merchandising—limited service; retail chain stores; institutional end-users who purchase materials for their own use; and schools that purchase customized products for their own use and for selling to students).

Section 351.412(c)(2) of the Department's regulations provides that the Department will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not a sufficient, condition for determining that there is a difference in the stage of marketing. Some overlap in selling activities will not preclude a determination that sales are at different stages of marketing.

Our analysis of the selling activities for Navneet shows that Navneet performs similar selling activities for different customer categories, although some of the activities were at different levels of intensity. Moreover, some selling activities within the claimed LOT1 are at a higher level of intensity than the same selling activities in the claimed LOT2 through LOT5. In addition, there is overlap among the channels of distribution for the different customer categories between LOT1 and LOT2 through LOT5 customers. Although there are differences in intensity of selling activities among LOT2 through LOT5 customers, this, in and of itself, does not show a substantial difference in selling activities that would form the basis for finding distinct LOTs. *See, Certain Lined Paper Products From India: Notice of Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 51558, 51563 (October 7, 2009) (*Preliminary Results*), unchanged in the final results of the *Second Administrative Review*,[2] and accompanying Issues and Decision Memorandum at Comment 5. The differences in Navneet's selling activities chart indicate that there are two LOTs in the home market: (1) LOT1 and (2) a combined LOT2, which is comprised of Navneet's reported LOT2 through LOT5. The selling activities in the combined LOT2 in the home market are comparable to the selling activities in the LOT in the U.S. market. Due to the proprietary nature of this issue, please refer to Navneet's Preliminary Calculation Memorandum for further discussion, dated October 7, 2010 (Preliminary Calculation Memorandum).

In the U.S. market, Navneet reported that its sales were made through one channel of distribution to one customer category, and therefore, at one LOT. The Department has determined that Navneet's home market sales in the combined LOT2 are at the same stage of marketing as the U.S. sales. We only compared home market sales in the combined LOT2 to the U.S. sales and determined that no LOT adjustment for Navneet's sales to the United States was necessary.

Although Navneet reported that it has five channels of distribution or five LOTs in the home market, Navneet states that without intending to waive its right to make further argument on this point, it has acceded to the Department's level of trade definitions in reporting its sales in this review. *See* Navneet's Questionnaire Response, dated April 6, 2010, at page B–39. Thus, Navneet, in its home market database reported two LOTs: LOT1 sales to distributors with full-service downstream merchandising, and a combined LOT2, which consists of sales made through channels two through five.

Cost of Production Analysis

We are investigating Navneet's costs because during the most recently completed segment of the proceeding in which Navneet participated (the *Second Administrative Review*), the Department found and disregarded sales that failed the cost test.

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average cost of production (COP) based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general and

[2] *See Certain Lined Paper Products from India: Notice of Final Results of Antidumping Duty Administrative Review,* 75 FR 7563 (February 22, 2010).

administrative expenses (SG&A) and packing expenses. For these preliminary results, we have adjusted Navneet's reported cost of manufacturing to include common production costs not allocated to divisions and other common production costs of the stationery division not allocated to subdivisions.

Consistent with the Department's methodology in the second administrative review, we calculated the COP and constructed value (CV) of all CONNUMs sold in the home market to exclude the central excise tax on raw material inputs. *See Preliminary Results* at 51564, unchanged in the final results of the *Second Administrative Review.*

Test of Comparison Market Prices

As required under section 773(b)(2) of the Act, we compared the weighted-average COP to the per-unit price of the comparison market sales of the foreign like product, to determine whether these sales were made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses and packing expenses which were excluded from COP for comparison purposes.

Results of COP Test

Pursuant to section 773(b)(1) of the Act, we may disregard below-COP sales in the determination of NV if these sales have been made within an extended period of time in substantial quantities and were not at prices which permit recovery of all costs within a reasonable period of time. Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP for at least six months of the POR, we determined that sales of that model were made in "substantial quantities" within an extended period of time, in accordance with sections 773(b)(2)(B) and (C) of the Act. Where prices of a respondent's sales of a given product were below the per-unit COP at the time of sale and below the weighted-average per-unit costs for the POR, we determined that sales were not at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. In such cases, we disregarded the below-cost sales in accordance with section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities."

We tested and identified below-cost home market sales for Navneet. We disregarded individual below-cost sales of a given product and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. *See* Preliminary Calculation Memorandum.

Calculation of Normal Value Based on Comparison Market Prices

For Navneet, we based home market prices on packed prices to unaffiliated purchasers in India. Where appropriate, in accordance with section 773(a)(6)(B) of the Act, we deducted from the starting price inland freight. Pursuant to 19 CFR 351.401(c), we deducted rebates and discounts. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing, respectively.

In addition, for comparisons made to EP sales, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b) by deducting direct selling expenses incurred for home market sales (credit expense) and adding U.S. direct selling expenses (*i.e.,* credit directly linked to sales transactions). In accordance with section 773(a)(1)(B)(i) of the Act, we based NV on LOT2 sales. *See* the "Level of Trade" section above.

Finally, consistent with section 773(a)(6)(B)(iii) of the Act, we made an adjustment for central excise taxes that Navneet paid on raw material inputs used to produce merchandise that was sold in the home market that were not paid on the same inputs used to produce merchandise that was exported from India. Under Indian law, Navneet was prohibited from charging this excise tax on sales of school supplies. In addition, the excise tax that Navneet paid on inputs into school supplies was not refunded and was not otherwise recovered by Navneet. Therefore, we find the tax is included in the price and adjustment is warranted. For products other than school supplies, Navneet reported home market selling prices net of the excise tax.

Calculation of Normal Value Based on Constructed Value

In accordance with section 773(a)(4) of the Act, we based Super Impex's NV on CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of Super Impex's cost of materials and fabrication for the foreign like product, plus amounts for SG&A, profit, and U.S. packing costs. We calculated the cost of materials and fabrication based on the CV information provided by Super Impex in its section D response. Because Super Impex does not have Indian sales of the foreign like product or third country sales, the Department does not have comparison market selling expenses or profit to use in its calculations, as directed by section 773(e) of the Act. As an alternative, the Department has used as selling expenses and profit for Super Impex, data from the March 31, 2009 financial statements of two Indian companies which are already on the records: Blue Bird and Navneet. We found that both Blue Bird and Navneet produce and sell merchandise within the same general category of products as the foreign like product in the Indian market.[3] For purposes of these preliminary results, we calculated the selling expenses and profit for Super Impex based on the simple average ratios of the respective selling expenses and profit of Blue Bird and Navneet. *See* Memorandum from Cindy Robinson to Melissa Skinner, Director, AD/CVD Operations, Office 3, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Super Impex Paper Limited, dated October 7, 2010 (COP/CV Memo).

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Non-Selected Rate

The statute and the Department's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. However, the Department normally determines the rates for non-selected companies in

[3] On July 19, 2010, petitioner also placed on record the March 31, 2009, financial statements of Cello Writing Instruments & Containers Private Limited (Cello). However, we found that Cello is not a producer and seller of merchandise within the same general category of products as the foreign like product in the Indian market. Therefore, for purposes of these preliminary results, we have not included Cello's data in the derivation of selling and profit ratios for Super Impex. *See* COP/CV Memo.

reviews in a manner that is consistent with section 735(c)(5) of the Act. Section 735(c)(5)(A) of the Act instructs the Department to calculate an all-others rate using the weighted average of the dumping margins established for the producers/exporters individually examined, excluding any zero or *de minimis* margins or any margins based on total facts available.

In this review, Super Impex is the only respondent for which the Department has calculated a company-specific rate that is not zero, *de minimis,* or based on total facts available. Therefore, for purposes of these preliminary results, the 29 remaining non-selected companies subject to this review will receive the rate calculated for Super Impex in this review. *See also* the "Suspension of Liquidation" section, below.

Preliminary Results of the Review

We preliminarily determine that weighted-average dumping margins exist for the following respondents for the period September 1, 2008, through August 31, 2009, as follows:

Manufacturer/exporter	Weighted average margin (percent)
Navneet Publications (India) Ltd	*De minimis.*
Super Impex	2.12.

Review-Specific Average Rate Applicable to the 29 Non-Selected Companies Subject to This Review:

Manufacturer/exporter	Weighted average margin (percent)
Abhinav Paper Products Pvt. Ltd	2.12
American Scholar, Inc. and/or I–Scholar	2.12
Ampoules & Vials Mfg. Co. Ltd	2.12
Bafna Exports	2.12
Cello International Pvt. Ltd. (M/S Cello Paper Products)	2.12
Corporate Stationary Pvt. Ltd	2.12
Creative Divya	2.12
D.D International	2.12
Exmart International Pvt. Ltd	2.12
Fatechand Mahendrakumar	2.12
FFI International	2.12
Freight India Logistics Pvt. Ltd	2.12
International Greetings Pvt. Ltd	2.12
Lodha Offset Limited	2.12
Magic International	2.12
Marigold Exlm Pvt. Ltd	2.12
Marisa International	2.12
Paperwise Inc	2.12
Pioneer Stationery Pvt. Ltd	2.12
Premier Exports	2.12
Riddhi Enterprises	2.12
SAB International	2.12
Sar Transport Systems	2.12
Seet Kamal International	2.12
Solitaire Logistics Pvt. Ltd. (Eternity Int'l Freight, forwarder on behalf of Solitaire Logistics Pvt. Ltd.)	2.12
Sonal Printers Pvt Ltd	2.12
Swati Growth Funds Ltd	2.12
V & M	2.12
Yash Laminates	2.12

Public Comment

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs are limited to issues raised in the case briefs and may be filed no later than five days after the time limit for filing the case briefs. *See* 19 CFR 351.309(d). Parties submitting arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities, in accordance with 19 CFR 351.309(d)(2). Further, parties submitting case and/or rebuttal briefs are requested to provide the Department with an additional electronic copy of the public version of any such comments on a computer diskette. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, ordinarily will be held two days after the due date of the rebuttal briefs in accordance with 19 CFR 351.310(d)(1). The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results, unless extended.

See section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h).

Assessment Rate

Upon completion of the final results of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department will calculate importer-specific assessment rates for each respondent based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Where the respondent did not report the entered value for U.S. sales, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* rates based on the estimated entered value. Where the assessment rate is above *de minimis,* we will instruct CBP to assess duties on all entries of subject merchandise by that importer. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent). The Department intends to issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondents subject to this review for which the reviewed companies did not know that the merchandise which it sold to an intermediary (*e.g.* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. For a full discussion of this clarification, see *id.*

Cash Deposit Requirements

To calculate the cash deposit rate for Navneet, we divided its total dumping margin by the total net value of its sales during the review period. For the responsive companies which were not selected for individual review, we have calculated a cash deposit rate based on the simple average of the cash deposit rates calculated for the companies selected for individual review. In this instance, there is only one non-AFA rate which we applied.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CLPP from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for companies subject to this review will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis,* no cash deposit will be required; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results for a review in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 3.91 percent, the all-others rate established in the LTFV investigation. *See Lined Paper Orders.*[4] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: October 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–26191 Filed 10–20–10; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006) (*Lined Paper Orders*).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ75

Atlantic Highly Migratory Species; Advisory Panel

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; solicitation of nominations.

SUMMARY: NMFS solicits nominations for the Atlantic Highly Migratory Species (HMS) Advisory Panel (AP). NMFS consults with and considers the comments and views of the HMS AP when preparing and implementing Fishery Management Plans (FMPs) or FMP amendments for Atlantic tunas, swordfish, sharks, and billfish. Nominations are being sought to fill one-third (11) of the seats on the HMS AP for a 3-year appointment. Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, and non-governmental organizations will be considered for membership in the HMS AP.

DATES: Nominations must be received on or before November 22, 2010.

ADDRESSES: You may submit nominations and requests for the Advisory Panel Statement of Organization, Practices, and Procedures by any of the following methods:

- *E-mail: HMSAP.Nominations@noaa.gov.* Include in the subject line the following identifier: "HMS AP Nominations."
- *Mail:* Brian Parker, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.
- *Fax:* 301–713–1917.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell at (301) 713–2347 x128.

SUPPLEMENTARY INFORMATION:

Introduction

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104–297, provided for the establishment of Advisory Panels to assist in the collection and evaluation of information relevant to the development of any Fishery Management Plan (FMP) or FMP amendment. The HMS AP has consulted with NMFS on the HMS FMP (April 1999), Amendment 1 to the Billfish FMP (April 1999), Amendment 1 to the HMS FMP (November 2003), the Consolidated HMS FMP (July 2006), and Amendments 1, 2, and 3 to the Consolidated HMS FMP (April 2008, September 2008, and February 2009, respectively).

Procedures and Guidelines

A. Nomination Procedures for Appointments to the Advisory Panel

Nomination packages should include:

1. The name of the applicant or nominee and a description of his/her interest in HMS or in particular species of sharks, swordfish, tunas, or billfish;

2. A statement of background and/or qualifications;

3. A written commitment that the applicant or nominee shall actively participate in good faith in the meetings and tasks of the HMS AP; and

4. A list of outreach resources that the applicant has at his/her disposal to communicate HMS issues to various interest groups.

Tenure for the HMS AP

Member tenure will be for 3 years (36 months), with approximately one-third of the members' terms expiring on December 31 of each year. Nominations are sought for terms beginning January 2011 and expiring December 2013.

B. Participants

Nominations for the HMS AP will be accepted to allow representation from commercial and recreational fishing interests, the scientific community, and the conservation community who are knowledgeable about Atlantic HMS and/or Atlantic HMS fisheries. Current representation on the HMS AP, as shown in Table 1, consists of 12 members representing commercial interests, 12 members representing recreational interests, 4 members representing environmental interests, 4 academic representatives, and 1 International Commission for the Conservation of Atlantic Tunas (ICCAT) Advisory Committee Chairperson. Each HMS AP member serves a three-year term with approximately one-third (11) of the total number of seats (33) expiring on December 31 of each year. NMFS seeks to fill 5 commercial, 4 recreational, and 2 environmental vacancies by December 31, 2010. NMFS will seek to fill vacancies based primarily on maintaining the current representation from each of the sectors, and secondarily by species expertise and/or representation from the regions (Northeast, Mid-Atlantic, South Atlantic, Gulf of Mexico, and Caribbean). Table 1 includes the current representation on the HMS AP by sector and species and terms that are expiring are identified in bold. It does not necessarily indicate that NMFS will only consider persons who have expertise in the species that are listed.

TABLE 1—CURRENT EXPIRING REPRESENTATION ON THE HMS AP BY SECTOR AND SPECIES. TERMS THAT ARE EXPIRING ARE IN BOLD

Sector	Species	Date appointed	Date term expires
Academic	HMS	1/1/2009	12/31/2011
Academic	Tuna	1/1/2010	12/31/2012
Academic	Shark	1/1/2010	12/31/2012
Academic	HMS	1/1/2010	12/31/2012
Commercial	**Swordfish/Tuna**	**1/1/2008**	**12/31/2010**
Commercial	**HMS**	**1/1/2008**	**12/31/2010**
Commercial	**Tuna**	**1/1/2008**	**12/31/2010**
Commercial	**Swordfish**	**1/1/2008**	**12/31/2010**
Commercial	**HMS**	**1/1/2008**	**12/31/2010**
Commercial	HMS	1/1/2009	12/31/2011
Commercial	HMS	1/1/2009	12/31/2011
Commercial	HMS	1/1/2009	12/31/2011
Commercial	Tuna	1/1/2009	12/31/2011
Commercial	HMS	1/1/2009	12/31/2011
Commercial	Shark	1/1/2010	12/31/2012
Commercial	Swordfish/Tuna	1/1/2010	12/31/2012
Environmental	**HMS**	**1/1/2008**	**12/31/2010**
Environmental	**HMS**	**1/1/2008**	**12/31/2010**
Environmental	HMS	1/1/2009	12/31/2011
Environmental	Shark	1/1/2009	12/31/2011
Recreational	**HMS**	**1/1/2008**	**12/31/2010**
Recreational	**HMS**	**1/1/2008**	**12/31/2010**
Recreational	**HMS**	**1/1/2008**	**12/31/2010**
Recreational	**Billfish**	**1/1/2008**	**12/31/2010**
Recreational	HMS	1/1/2009	12/31/2011
Recreational	HMS	1/1/2009	12/31/2011
Recreational	Tuna	1/1/2009	12/31/2011
Recreational	Swordfish	1/1/2010	12/31/2012
Recreational	HMS	1/1/2010	12/31/2012
Recreational	HMS	1/1/2010	12/31/2012
Recreational	Billfish	1/1/2010	12/31/2012
Recreational	HMS	1/1/2010	12/31/2012
ICCAT Chair	HMS		

Each sector must be adequately represented, and the intent is to have a group that, as a whole, reflects an appropriate and equitable balance and mix of interests given the responsibilities of the HMS AP. Criteria for membership include one or more of the following: (1) Experience in the HMS recreational fishing industry; (2) experience in the HMS commercial fishing industry; (3) experience in fishery-related industries (*e.g.*, marinas, bait and tackle shops); (4) experience in the scientific community working with HMS; and/or (5) representation of a private, non-governmental, regional, national, or international organization representing marine fisheries; or environmental, governmental, or academic interests dealing with HMS.

Five additional members on the HMS AP include one member representing each of the following Councils: New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council. The HMS AP also includes 22 ex-officio participants: 20 representatives of the coastal states and two representatives of the interstate commissions (the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission).

NMFS will provide the necessary administrative support, including technical assistance, for the HMS AP. However, NMFS will not compensate participants with monetary support of any kind. Depending on availability of funds, members may be reimbursed for travel costs related to the HMS AP meetings.

C. Meeting Schedule

Meetings of the HMS AP will be held as frequently as necessary but are routinely held twice each year in the spring and fall. The meetings may be held in conjunction with public hearings.

Dated: October 15, 2010.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ60

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Eastern Tropical Pacific Ocean, October Through November 2010

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental take authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Scripps Institution of Oceanography (SIO), a part of the University of California, to take small numbers of marine mammals, by harassment, incidental to conducting a marine geophysical survey in the eastern tropical Pacific Ocean (ETP), October through November, 2010.

DATES: Effective October 19, 2010, through November 30, 2010.

ADDRESSES: A copy of the IHA and application are available by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 or by telephoning the contacts listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. The following associated documents are also available at the same Internet address: SIO's application, the Environmental Assessment (EA) prepared by NMFS, and the finding of no significant impact (FONSI). The NMFS Biological Opinion will be available online at: *http://www.nmfs.noaa.gov/pr/consultation/opinions.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Ben Laws or Candace Nachman, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371(a)(5)(D)) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and monitoring and reporting of such takings. NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS' review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

NMFS received an application on May 28, 2010 from SIO for the taking, by harassment, of marine mammals, incidental to conducting a marine geophysical survey in the ETP. SIO, with research funding from the U.S. National Science Foundation (NSF), plans to conduct a marine seismic survey in the ETP, from October through November 2010.

SIO plans to use one source vessel, the R/V *Melville* (*Melville*), with a seismic airgun array to conduct a geophysical survey in the ETP. In addition to the operations of the seismic airgun array, SIO intends to operate a multibeam echosounder (MBES) and a sub-bottom profiler (SBP) continuously throughout the survey. The purpose of this project is to better understand how marine sediments record paleo-oceanographic information.

Acoustic stimuli (*i.e.,* increased underwater sound) generated during the operation of the seismic airgun array may have the potential to cause marine mammals in the survey area to be behaviorally disturbed in a manner that NMFS considers to be Level B harassment. This is the principal means of marine mammal taking associated with these activities and SIO has requested an authorization for the incidental take, by Level B harassment only, of up to 21 species of marine mammals. These species include: Bryde's whale; blue whale; sperm whale; humpback whale; Cuvier's beaked whale; Blainville's beaked whale; pygmy beaked whale; gingko-toothed beaked whale; rough-toothed dolphin; bottlenose dolphin; pantropical spotted dolphin; spinner dolphin; striped dolphin; Fraser's dolphin; short-beaked common dolphin; Risso's dolphin; melon-headed whale; pygmy killer whale; false killer whale; killer whale; and short-finned pilot whale. Blainville's beaked whale, pygmy beaked whale, and gingko-toothed beaked whale are hereafter grouped as *Mesoplodon* sp., as these species are expected to be encountered only infrequently and are difficult to distinguish from one another.

Description of the Specified Activity

The *Melville* is expected to depart Puntarenas, Costa Rica, on October 19, 2010, and spend approximately fifteen days conducting seismic surveys, ten days collecting water and core samples, and approximately two days in transit, arriving at Arica, Chile, on November 14, 2010. The proposed survey will encompass the area from approximately 8° N–12° S and 80–91° W, off the coasts of Costa Rica, Panama, Colombia, Ecuador, and Peru, in the high seas and within the Exclusive Economic Zones (EEZs) of Costa Rica, Panama, Colombia, and Ecuador. At each of four sites (see Figure 1 of SIO's application), seismic operations will be conducted for approximately two days, and each water sampling and coring station will be occupied for one to two days. SIO will operate the *Melville* to deploy an airgun array and tow a hydrophone streamer to complete the survey. Some minor deviation from these dates is possible, depending on logistics and weather. Therefore, NMFS plans to issue an authorization that extends to November 30, 2010.

The *Melville* will deploy a pair of low-energy generator-injector (GI) airguns as an energy source at a depth of 2 m (each with a discharge volume of 45 in^3), plus either of two towed hydrophone streamers, one 725 m (2,378.6 ft) long with 40 channels, and the other 350 m (1,148.3 ft) long with 16 channels. Hydrophone streamers are towed at adjustable depth to afford best reception of returning seismic signals, depending upon surface conditions, but are typically towed at approximately 10 m. The energy to the GI airgun is compressed air supplied by compressors onboard the source vessel. As the GI airgun is towed along the survey lines, the receiving systems will receive the returning acoustic signals. The study (*e.g.,* equipment testing, startup, line changes, repeat coverage of any areas) will take place in waters deeper than 1,000 m (3,280 ft). All planned geophysical data acquisition activities will be conducted by SIO with on-board assistance by the scientists who have proposed the study. The Chief Scientist is Dr. Franco Marcantonio of Texas A&M University. The vessel will be self-contained, and the crew will live aboard the vessel for the entire cruise.

NMFS outlined the purpose of the program in a previous notice for the proposed IHA (75 FR 54095, September 3, 2010). The activities to be conducted have not changed between the proposed IHA notice and this final notice announcing the issuance of the IHA. For a more detailed description of the authorized action, including vessel and acoustic source specifications, the reader should refer to the aforementioned proposed IHA notice.

Several errors found in the notice for the proposed IHA (75 FR 54095, September 3, 2010) have been corrected in this document. These errors are as follows:

- The notice for proposed IHA referenced 40, 16, and 12 channel hydrophone streamers. The 12 channel streamer was referenced in error; 40 and 16 channel streamers will be utilized as discussed in this document.
- Several errors were corrected with regard to exposure estimates and the resulting take authorization (see Estimated Take of Marine Mammals by Incidental Harassment and Table 2 of this document).
  - Take estimate for sperm whales (*Physeter macrocephalus*) was presented as 23 due to a calculation error and has been revised to 22.
  - Take estimate for striped dolphins (*Stenella coeruleoalba*) was presented as six, due to the erroneous use of Fraser's dolphin (*Lagenodelphis hosei*) density estimates. Take estimate, as well as density estimate, for striped dolphin has been corrected to 192.
  - Exposure estimates and take authorization numbers have been corrected for several species by rounding up rather than down. As there can be no portion of an individual in estimating take, NMFS has rounded up in all cases where exposure estimates have some non-negligible portion of a whole (see Table 2 in this document).

Comments and Responses

A notice of receipt of the SIO application and proposed IHA was published in the **Federal Register** on September 3, 2010 (75 FR 54095). During the comment period, NMFS received comments from the Marine Mammal Commission (Commission). The public comments can be found online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Following are their comments and NMFS' responses.

Comment 1: The Commission recommends that NMFS require the applicant to use location-specific environmental parameters to re-estimate safety zones and then recalculate associated exposures. The Commission further suggests that the applicant should be required to use in-situ measurements to verify and, if need be, refine the safety zones prior to or at the beginning of the survey, and that the applicant should be required to determine actual exposures based on refined safety zones, sightability, and relevant detection functions.

Response: NMFS is confident in the peer-reviewed results of the Lamont-Doherty Earth Observatory seismic equipment calibration studies which, although viewed as conservative, are used to determine cruise-specific exclusion zones and which factor into exposure estimates. With the expected low density of marine mammals, combined with the remote, deep-water survey location, NMFS has determined that the exclusion zones identified in

the IHA are appropriate for the survey and that additional field measurement is not necessary at this time. While exposures of marine mammals to acoustic stimuli are difficult to estimate, NMFS is confident that the levels of take authorized herein are estimated based upon the best available scientific information and estimation methodology. The safety zones used to estimate exposure are appropriate and sufficient.

Comment 2: The Commission recommends that NMFS provide additional justification for its preliminary determination that the planned monitoring program will be sufficient to detect, with a high level of confidence, all marine mammals within or entering the identified safety zones.

Response: As discussed in the proposed rule, combined with the fact that a portion of marine mammals would be expected to avoid exposure to the higher levels of sound present within the designated safety zone, as well as the comparatively small size of the safety zone, NMFS believes that the planned monitoring program will be sufficient to, with reasonable certainty, minimize the exposure of marine mammals to sound within the identified exclusion zones (EZ). This monitoring, along with the required mitigation measures, will help ensure the authorized taking effects the least practicable adverse impact on the affected species or stocks and will have a negligible impact on the affected species or stocks. Until proven technological advances are made, nighttime mitigation measures during operations include combinations of the use of protected species observers (PSOs) and night vision devices. In the event of a complete shut-down of the airgun array, for mitigation or repairs, airgun operations will be suspended until nautical twilight-dawn (when PSOs are able to clear the EZ). Airgun operations will not begin until the entire EZ radius is visible for at least 30 minutes.

Comment 3: The Commission recommends that NMFS propose to SIO that it revise its study design to include collection of meaningful baseline data on the distribution and behavior of marine mammals.

Response: The purpose of this cruise is for marine geophysical research, not to conduct a dedicated marine mammal research survey. Extending or altering the survey is not practicable from either an operational or research standpoint for the applicant. Due to the remote location of the survey and the length of time needed to conduct the requested research, there may be little time left for the vessel to operate without the need for refueling and servicing.

During the cruise, there will be significant amounts of transit time pre- and post-survey during which PSOs will be on watch (*e.g.,* prior to and after the seismic portions of the survey). The collection of this observational data by PSOs may provide meaningful baseline data on marine mammals, but it is unlikely that the information would result in any statistically robust conclusions for this particular seismic survey. As the monitoring program is currently devised, one PSO (at minimum) will be on watch not only during all daylight airgun operations, or start-up of airguns at any time, but at all times when effective observation is possible. Any further revisions of study design are impractical.

In addition, SIO is not responsible for the study design. Through a cooperative agreement with the NSF, SIO is the operator of the *Melville,* which hosts the field research program. The study is designed by the Principal Investigator and is submitted to NSF as a proposal for funding consideration and subsequently reviewed by a merit review panel. This study was selected based on its scientific merits, and extension or modification of the field component would require scientific justification and NSF approval and potentially further merit review.

Comment 4: The Commission recommends that NMFS extend the monitoring period to at least one hour before initiation of seismic activities and at least one hour before the resumption of airgun activities after a power-down because of a marine mammal sighting within a safety zone.

Response: As the Commission points out, several species of deep-diving cetaceans are capable of remaining underwater for more than 30 minutes, however, for the following reasons NMFS believes that 30 minutes is an adequate length for the monitoring period prior to the start-up of airguns: (1) In most cases PSOs are making observations during times when seismic sources are not being operated and will actually be observing prior to the 30 min observation period anyway, (2) the majority of the species that may be exposed do not stay underwater more than 30 minutes, and (3) if deep-diving individuals happened to be in the area in the short time immediately prior to the pre-start-up monitoring and if an animal's maximum underwater time is 45 min, there is only a one in three chance that the last random surfacing would be prior to the beginning of the required 30 min monitoring period.

Also, seismic vessels are moving continuously (because of the long, towed array) and NMFS believes that unless the animal submerges and follows at the speed of the vessel (highly unlikely, especially when considering that a significant part of their movements is vertical [deep-diving]), the vessel will be far beyond the length of the safety radii within 30 min, and therefore it will be safe to resume acquisition. Finally, due to the nature of the seismic source to be used during the survey, power-down (as mentioned in the Commission's comment) will not be used as a mitigation measure.

In addition, mitigation measures are required to be "practicable." NMFS believes that the framework for visual monitoring will (1) be effective at spotting almost all species for which take is requested; and (2) that imposing additional requirements, such as those suggested by the Commission, would not meaningfully increase the effectiveness of observing marine mammals approaching or entering the exclusion zones. The Commission's recommendation would cause additional impact on the science mission, limiting acquisition opportunity without dramatically increasing overall effectiveness of visual monitoring.

Comment 5: The Commission recommends that NMFS continue to require ramp-up and power-down procedures as a mitigation measure pending the outcome of a meeting to discuss these procedures.

Response: NMFS will continue to require ramp-up and power-down procedures as mitigation measures, when applicable, unless or until these measures are proven to be ineffective or other measures are proven to be more effective.

Comment 6: The Commission recommends that NMFS not include detailed information and analyses for species that are not expected to be in the proposed survey area in future **Federal Register** notices.

Response: NMFS agrees that detailed information and analyses for species that are not expected to be in the proposed survey area should not be included in **Federal Register** notices. NMFS considers the information included in the **Federal Register** notice of proposed IHA (75 FR 54095, September 3, 2010) in this case to be necessary justification for determinations to not authorize take for certain species.

In closing, NMFS is planning to meet with the Commission to further discuss the broad issues raised in their

comments, which relate to more than just the IHA contemplated here.

Description of the Marine Mammals in the Area of the Specified Activity

Forty-three species of marine mammals, including 29 odontocetes, 7 mysticetes, 6 pinnipeds, and the marine sea otter (*Enhydra lutris*), are known to occur in the ETP. Of these, 21 cetacean species are likely to occur in the proposed survey areas in the ETP during October-November (see Table 2 in this document), and are considered further here. Three of these cetacean species are listed under the Endangered Species Act (ESA) as Endangered: The sperm (*Physeter macrocephalus*), humpback (*Megaptera novaeangliae*), and blue (*Balaenoptera musculus*) whales.

NMFS has presented a more detailed discussion of the status of these stocks and their occurrence in the ETP in the notice of the proposed IHA (75 FR 54095, September 3, 2010).

Potential Effects on Marine Mammals

Summary of Potential Effects of Airgun Sounds

Level B harassment of cetaceans has the potential to occur during the seismic survey due to acoustic stimuli caused by the firing of airguns, which introduces sound into the marine environment. The effects of sounds from airguns might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.,* 2007). Although the possibility cannot be entirely excluded, it is unlikely that the project would result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Some behavioral disturbance is expected, but NMFS expects the disturbance to be localized and short-term.

The notice of the proposed IHA (75 FR 54095, September 3, 2010) included a discussion of the effects of sounds from airguns on mysticetes and odontocetes, including tolerance, masking, behavioral disturbance, hearing impairment, and other non-auditory physical effects. Additional information on the behavioral reactions (or lack thereof) by all types of marine mammals to seismic vessels can be found in SIO's application and NMFS' EA. The notice of the proposed IHA also included a discussion of the potential effects of the multibeam echosounder (MBES) and the sub-bottom profiler (SBP). Because of the shape of the beams of these sources and their power, NMFS believes it unlikely that marine mammals will be exposed to either the MBES or the SBP at levels at or above those likely to cause harassment. Further, NMFS believes that the brief exposure of cetaceans to a few signals from the multi-beam bathymetric sonar system is not likely to result in the harassment of marine mammals.

Anticipated Effects on Marine Mammal Habitat

A detailed discussion of the potential effects of this action on marine mammal habitat, including physiological and behavioral effects on marine fish and invertebrates was included in the proposed IHA (75 FR 54095, September 3, 2010). Based on the discussion in the proposed IHA notice and the nature of the activities (limited duration), the authorized operations are not expected to result in any permanent impact on habitats used by marine mammals, including the food sources they use. The main impact associated with the activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

Mitigation

In order to issue an incidental take authorization (ITA) under sections 101(a)(5)(A) and (D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

Mitigation and monitoring measures to be implemented for the seismic survey have been developed and refined during previous SIO seismic studies and associated EAs, IHA applications, and IHAs. The mitigation and monitoring measures described herein represent a combination of procedures required by past IHAs for other similar projects and on best practices recommended in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman (2007). The measures are described in detail below.

Mitigation measures to be implemented by SIO during the survey include (1) visual monitoring by protected species observers (discussed later in this document), (2) establishment of an exclusion zone (EZ), (3) speed or course alteration, provided that doing so will not compromise operational safety requirements, (4) GI airgun shut down procedures, and (5) ramp-up procedures. Although power-down procedures are often standard operating practice for seismic surveys, they will not be used here because powering down from two airguns to one airgun would make only a small difference in the 180-dB safety radius. The difference is not enough to allow continued one-airgun operations if a mammal came within the safety radius for two airguns.

Exclusion Zones—As discussed previously in this document, NMFS has determined that for acoustic effects, using acoustic thresholds in combination with corresponding safety radii is an effective way to consistently apply measures to avoid or minimize the impacts of an action. Thresholds are used to establish a mitigation shut-down, or exclusion, zone, i.e., if an animal enters an area calculated to be ensonified above the level of an established threshold, a sound source is shut down.

As a matter of past practice and based on the best available information at the time regarding the effects of marine sound, NMFS estimates that Level A harassment from acoustic sources may occur when cetaceans are exposed to levels above 180 dB re 1 μPa (rms) level. NMFS also considers 160 dB re 1 μPa (rms) as the criterion for estimating the onset of Level B harassment from acoustic sources producing impulse sounds, as in this seismic survey.

Empirical data concerning the 180– and 160–dB distances have been acquired based on measurements during the acoustic verification study conducted by L–DEO in the northern Gulf of Mexico from May 27–June 3, 2003 (Tolstoy *et al.,* 2004). The empirical data indicate that, for this survey, the assumed 180– and 160–dB radii are 40 m (131.2 ft) and 400 m (1,312.3 ft), respectively (see Table 1 in this document).

TABLE 1—PREDICTED DISTANCES TO WHICH SOUND LEVELS ≥190, 180 AND 160 DB RE 1 μPA (RMS) MIGHT BE RECEIVED FROM TWO 45 IN^3 GI AIRGUNS THAT WILL BE USED DURING THE SEISMIC SURVEYS IN THE EASTERN TROPICAL PACIFIC OCEAN DURING OCTOBER–NOVEMBER 2010

[Distances are based on model results provided by L–DEO.]

Source and volume	Tow depth (m)	Water depth	Estimated Distances at Received Levels (m)	
			180 dB	160 dB
Two GI airguns, 45 in^3 each	2	Deep (>1,000 m)	40	400

Speed or Course Alteration—If a marine mammal is detected outside the EZ but is likely to enter it based on relative movement of the vessel and the animal, and if safety and scientific objectives allow, the vessel speed and/or course will be adjusted to minimize the likelihood of the animal entering the EZ. In the event that safety and/or scientific objectives do not allow for alteration of speed and/or course as a needed mitigation measure, shut-down procedures will still be utilized (see below). Major course and speed adjustments are often impractical when towing long seismic streamers and large source arrays but are possible in this case because only a small source and short streamers will be used.

Shut-down Procedures—If a marine mammal is detected by PSOs outside the EZ but is likely to enter the EZ, and if the vessel's speed and/or course cannot be changed to avoid having the animal enter the EZ, the airgun array, MBES, and SBP will be shut down before the animal is within the EZ. Likewise, if a marine mammal is already within the EZ when first detected, the airgun array, MBES, and SBP will be shut down immediately. Following a shut down, seismic activity will not resume until the marine mammal has cleared the EZ. The animal will be considered to have cleared the EZ if it (a) is visually observed to have left the EZ, or (b) has not been seen within the EZ for 15 min in the case of small odontocetes, or has not been seen within the EZ for 30 min in the case of mysticetes and large odontocetes, including sperm and beaked whales.

Ramp-up Procedures—A ramp-up procedure will be followed when the GI airguns begin operating after a specified period without GI airgun operations. It is proposed that, for the present cruise, this period would be approximately 1–2 min. This period is based on the 180–dB radii for the GI airguns (see Table 1 in this document) in relation to the planned speed of the *Melville* while shooting. Ramp-up will begin with a single GI airgun (45 in^3). The second GI airgun (45 in^3) will be added after 5 min. During ramp up, the PSOs will monitor the exclusion zone, and, if marine mammals are sighted, a shut-down will be implemented as though both GI airguns were operational.

If the complete EZ has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime, ramp-up will not commence. If one GI airgun has operated, ramp-up to full power will be permissible at night or in poor visibility on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single GI airgun and could move away if they choose. A ramp-up from a shut-down may occur at night, but only when the entire EZ is visible, and it has been determined from the pre-ramp up watch that the EZ is clear of marine mammals. Ramp-up of the GI airguns will not be initiated if a marine mammal is sighted within or near the applicable EZ during day or night.

NMFS has carefully evaluated the applicant's proposed mitigation measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

SIO will sponsor marine mammal monitoring during the present project, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the IHA. SIO's Monitoring Plan is described below this section and was planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions. SIO is prepared to discuss coordination of its monitoring program with any related work that might be done by other groups insofar as this is practical.

Vessel-Based Visual Monitoring

Three protected species observers (PSOs) will be based aboard the seismic source vessel for the duration of the cruise and will watch for marine mammals near the vessel during daytime airgun operations and during start-up of airguns at any time. Watches will be conducted by at least one observer 100% of the time during seismic surveys in daylight hours. Daylight observation by at least one observer will continue during non-seismic periods, as long as weather conditions make observations meaningful, for comparison of sighting rates and animal behavior during periods with vs. without airgun operations. PSOs will be appointed by SIO with NMFS concurrence after a review of their qualifications.

The *Melville* is a suitable platform for marine mammal observations. The observer platform is located one deck below and forward of the bridge (12.46 meters (40.88 ft) above the waterline), affording a relatively unobstructed 180-degree forward view. Aft views can be obtained along the port and starboard decks. During daytime hours, the observer(s) will scan the area systematically using reticulated 25 × 150 big-eye binoculars and 7 × 50 hand-held binoculars to determine bearing and distance of sightings. A clinometer is used to determine distances of animals in close proximity to the vessel. Hand-held fixed rangefinders and distance marks on the ship's side rails are used to measure the exact location of the safety zone. Laser rangefinders, which have proven to be less reliable for open water sighting, are also provided. During darkness, night-vision equipment will be available. The PSOs will be in wireless communication with ship's officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or GI airgun shut down.

Before commencing seismic operations during daylight hours, two observers will maintain a 360-degree watch for all marine mammals for at least 30 minutes prior to the start of seismic operations after an extended shutdown of the airguns (1–2 minutes, depending on vessel speed). If no marine mammals are observed within the EZ during this time, the observers will notify the seismic personnel of an "all clear" status. Watch periods are scheduled as a 2-hour rotation. The observers continually scan the water from the horizon to the ship's hull, and forward of 90 degrees from the port and starboard beams. Based on PSO observations, the GI airgun(s) will be shut down (as described earlier in this document) when marine mammals are detected within or about to enter a designated EZ that corresponds to the 180-dB re 1 μPa (rms) isopleth. The PSOs will continue to maintain watch to determine when the animal(s) are outside the EZ, and airgun operations will not resume until the animal has left that EZ. The predicted distance for the 180-dB EZ is listed in Table 1 earlier in this document. Seismic operations will resume only after the animals are seen to exit the safety radius or after no further visual detection of the animal for 15 minutes (for small odontocetes and pinnipeds) or 30 minutes (for mysticetes and large odontocetes, including beaked whales).

The bridge officers and other crew will be instructed to alert the observer on watch of any suspected marine mammal sighting. If needed, the bridge will be contacted in order to maneuver the ship to avoid interception with approaching marine mammals.

PSO Data and Documentation

PSOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document reactions or lack thereof. Data will be used to estimate numbers of animals potentially "taken" by harassment (as defined in the MMPA). They will also provide information needed to order a shutdown of the seismic source when a marine mammal is within or near the EZ. When a sighting is made, the following information about the sighting will be recorded:

- Species, group size, and age/size/sex categories (if determinable); behavior when first sighted and after initial sighting; heading (if consistent), bearing and distance from seismic vessel; sighting cue, apparent reaction to the seismic source or vessel (e.g., none, avoidance, approach, paralleling, etc.); and behavioral pace; and
- Time, location, heading, speed, activity of the vessel, sea state, visibility, cloud cover, and sun glare.

The data will also be recorded at the start and end of each observation watch and during a watch whenever there is a change in one or more of the variables.

All observations, as well as information regarding seismic source shutdown, will be recorded in a standardized format. Data collection procedures are adapted from the line-transect protocols developed by the SWFSC for their marine mammal abundance research cruises. A laptop computer is located on the observer platform for ease of data entry. The computer is connected to the ship's Global Positioning System, which allows a record of time and position to be made at 3-minute intervals and for each event entered (such as sightings, weather updates and effort changes). Data accuracy will be verified by the PSOs at sea and preliminary reports will be prepared during the field program and summaries forwarded to the SIO's shore facility and to NSF weekly or more frequently. PSO observations will provide the following information:

- The basis for decisions about shutting down the airgun arrays;
- Information needed to estimate the number of marine mammals potentially "taken by harassment", which will be reported to NMFS;
- Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted; and
- Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

A report will be submitted to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the amount and nature of potential "take" of marine mammals by harassment or in other ways.

All injured or dead marine mammals (regardless of cause) will be reported to NMFS as soon as practicable. The report should include species or description of animal, condition of animal, location, time first found, observed behaviors (if alive), and photo or video, if available.

Estimated Take of Marine Mammals by Incidental Harassment

With respect to the activities described here, the MMPA defines "harassment" as:

> Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

All anticipated takes will be by Level B harassment, involving temporary changes in behavior. The mitigation and monitoring measures described herein are expected to minimize the possibility of injurious or lethal takes such that take by Level A harassment, serious injury or mortality is considered remote. However, as noted earlier, there is no specific information demonstrating that injurious or lethal "takes" would occur even in the absence of the planned mitigation and monitoring measures. The sections here describe methods to estimate "take by Level B harassment" and present estimates of the numbers of marine mammals that might be affected during the proposed seismic program. The estimates of "take" are based on data collected in the ETP by NMFS SWFSC during 12 ship-based cetacean and ecosystem assessment surveys

conducted during July–December from 1986–2006.

It is assumed that, during simultaneous operations of the seismic sources and the other sources, any marine mammals close enough to be affected by the MBES or SBP would already be affected by the seismic sources. However, whether or not the seismic sources are operating simultaneously with the other sources, marine mammals are expected to exhibit no more than short-term and inconsequential responses to the MBES and SBP given their characteristics (e.g., narrow downward-directed beam) and other considerations described above, such as the unlikelihood of being exposed to the source at higher levels and the fact that it would likely only be for one or two pulses. Such reactions are not considered to constitute "taking" (NMFS, 2001). Therefore, no additional allowance is included for animals that might be affected by sound sources other than the seismic sources (*i.e.,* airguns).

Extensive systematic ship-based surveys have been conducted by NMFS SWFSC for marine mammals in the ETP. SWFSC has recently developed habitat modeling as a method to estimate cetacean densities on a finer spatial scale than traditional line-transect analyses by using a continuous function of habitat variables, *e.g.,* sea surface temperature, depth, distance from shore, and prey density (Barlow *et al.,* 2009). The models have been incorporated into a web-based Geographic Information System (GIS) developed by Duke University's Department of Defense Strategic Environmental Research and Development Program (SERDP) team in close collaboration with the SWFSC SERDP team (Read *et al.,* 2009). The GIS was used to obtain densities for the 10 cetaceans in the model (Bryde's whale, blue whale, *Mesoplodon* spp., rough-toothed, bottlenose, pantropical spotted, spinner, striped, and short-beaked common dolphins, and short-finned pilot whale) in each of eight areas: The four proposed survey areas (see Figure 1 in SIO's application), and corridors 1° wide and centered on the tracklines between the survey areas and from the southernmost survey area to the EEZ of Peru. For species sighted in SWFSC surveys whose sample sizes were too small to model density (sperm whale, humpback whale, Cuvier's beaked whale, Fraser's dolphin, Risso's dolphin, melon-headed, pygmy killer, false killer, and killer whales), SIO used densities from the surveys conducted during summer and fall 1986–1996, as summarized by Ferguson and Barlow (2001). Densities were calculated from Ferguson and Barlow (2003) for 5° x 5° blocks that include the proposed survey areas and corridors. Those blocks included 27,275 km (16,947.9 mi) of survey effort in Beaufort sea states 0–5 and 2,564 km (1,593.2 mi) of survey effort in Beaufort sea states 0–2. Densities were obtained for an additional eight species that were sighted in one or more of those blocks.

Oceanographic conditions, including occasional El Nino and La Nina events, influence the distribution and numbers of marine mammals present in the ETP, resulting in considerable year-to-year variation in the distribution and abundance of many marine mammal species (Escorza-Trevino, 2009). Thus, for some species, the densities derived from recent surveys may not be representative of the densities that will be encountered during the proposed seismic survey.

Table 3 in SIO's application gives the average (or "best") and maximum densities for each species of cetacean likely to occur in the study area, *i.e.,* species for which densities were obtained or assigned. These densities have been corrected for both detectability and availability bias by the study authors. Detectability bias is associated with diminishing sightability with increasing lateral distance from the trackline. Availability bias refers to the fact that there is less than 100 percent probability of sighting an animal that is present along the survey trackline. The estimated numbers of individuals potentially exposed are presented next based on the 160-dB re 1 µPa (rms) Level B harassment criterion for all cetaceans. It is assumed that marine mammals exposed to airgun sounds at that level might change their behavior sufficiently to be considered "taken by harassment".

It should be noted that the following estimates of "takes by harassment" assume that the surveys will be undertaken and completed; in fact, the planned number of line-kilometers has been increased to accommodate lines that may need to be repeated, equipment testing, etc. As is typical on offshore ship surveys, inclement weather and equipment malfunctions are likely to cause delays and may limit the number of useful line-kilometers of seismic operations that can be undertaken. Furthermore, any marine mammal sightings within or near the designated EZ will result in the shutdown of seismic operations as a mitigation measure. Thus, the following estimates of the numbers of marine mammals potentially exposed to 160-dB re 1 µPa (rms) sounds are precautionary and probably overestimate the actual numbers of marine mammals that might be taken. These estimates assume that there will be no weather, equipment, or mitigation delays, which is highly unlikely. There is some uncertainty about the representativeness of the data and the assumptions used in the calculations presented here. However, the approach used here is believed to be the best available approach.

The number of different individuals that may be exposed to GI airgun sounds with received levels ≥160 dB re 1 µPa (rms) on one or more occasions was estimated by considering the total marine area that would be within the 160-dB radius around the operating airgun array on at least one occasion, along with the expected density of animals in the area. The proposed seismic lines do not run parallel to each other in close proximity, which minimizes the number of times an individual mammal may be exposed during the survey; in this case, an individual could be exposed 1.01 times on average. The numbers of different individuals potentially exposed to ≥160 dB re 1 µPa (rms) were calculated by multiplying the expected species density, times the anticipated area to be ensonified to that level during GI airgun operations.

The area expected to be ensonified was determined by entering the planned survey lines into a MapInfo GIS, using the GIS to identify the relevant areas by "drawing" the applicable 160-dB buffer (see Table 1 in this document) around each seismic line, and then calculating the total area within the buffers. Areas where overlap occurred (because of intersecting lines) were included only once when estimating the number of individuals exposed.

Applying the approach described here, approximately 4,340 km^2 (1,675.7 mi^2) would be within the 160-dB isopleth on one or more occasions during the surveys. In calculating exposure estimates, this figure was increased by 25% (*i.e.,* to 5,425 km^2) in order to account for the potential need to re-survey lines or other contingency. This approach does not allow for turnover in the mammal populations in the study area during the course of the survey. That might underestimate actual numbers of individuals exposed, although the conservative distances used to calculate the area may offset this. In addition, the approach assumes that no cetaceans will move away or toward the trackline as the *Melville* approaches in response to increasing sound levels prior to the time the levels reach 160 dB. Another way of interpreting the estimates that follow (Table 2 in this document) is that they

represent the number of individuals that are expected (in the absence of a seismic program) to occur in the waters that will be exposed to ≥160 dB re 1 μPa (rms). The take estimates presented here do not take the proposed mitigation measures into consideration and thus are likely to be overestimates.

TABLE 2—THE ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 DB DURING SIO'S PROPOSED SEISMIC SURVEY IN THE EASTERN TROPICAL PACIFIC OCEAN IN OCT–NOV 2010. THE PROPOSED SOUND SOURCE IS A PAIR OF GI AIRGUNS. RECEIVED LEVELS ARE EXPRESSED IN DB RE 1 μPA (RMS) (AVERAGED OVER PULSE DURATION), CONSISTENT WITH NMFS' PRACTICE. NOT ALL MARINE MAMMALS WILL CHANGE THEIR BEHAVIOR WHEN EXPOSED TO THESE SOUND LEVELS, BUT SOME MAY ALTER THEIR BEHAVIOR WHEN LEVELS ARE LOWER (SEE TEXT). SEE TABLES 2–4 IN SIO'S APPLICATION FOR FURTHER DETAIL.

Species	Number of individuals exposed (best) [1]	Approx. % regional population (best) [2]	Take authorization
Mysticetes			
Bryde's whale (*Balaenoptera edeni*)	3	0.02	3
Blue whale (*Balaenoptera musculus*)	**2	0.05	2
Humpback whale (*Megaptera novaeangliae*)	**2	[3] NA	2
Odontocetes			
Sperm whale (*Physeter macrocephalus*)	22	0.09	22
Cuvier's beaked whale (*Ziphius cavirostris*)	10	0.05	10
Mesoplodon sp. (unidentified)	**2	<0.01	**2
Rough-toothed dolphin (*Steno bredanensis*)	9	0.01	*15
Pantropical spotted dolphin (*Stenella attenuata*)	**68	0.01	*131
Spinner dolphin (*Stenella longirostris*)	21	<0.01	*109
Bottlenose dolphin (*Tursiops truncatus*)	**83	0.02	**83
Striped dolphin (*Stenella coeruleoalba*)	192	<0.01	192
Fraser's dolphin (*Lagenodelphis hosei*)	6	<0.01	*440
Short-beaked common dolphin (*Delphinus delphis*)	777	0.02	777
Pygmy killer whale (*Feresa attenuata*)	**4	0.01	*30
Melon-headed whale (*Peponocephala electra*)	**16	0.03	*258
Risso's dolphin (*Grampus griseus*)	**56	0.05	**56
False killer whale (*Pseudorca crassidens*)	**3	0.01	*11
Killer whale *(Orcinus orca*)	5	0.05	5
Short-finned pilot whale (*Globicephala macrorhynchus*)	**35	0.01	**35

* Requested take authorization increased from 'best' exposure estimate to mean group size as reported in Ferguson *et al.* (2006).
** Rounded-up, where proposed IHA (75 FR 54095, September 3, 2010) presented figures rounded down. See Description of the Specified Activity in this document for discussion.
[1] Best (mean) estimate density are from Table 3 of SIO's application. Humpback whale estimates calculated independently using methodology described previously.
[2] Regional population size estimates are from Table 2 in the proposed IHA (75 FR 54095, September 3, 2010).
[3] Southern Hemisphere population sizes are poorly understood. However, the number of individuals potentially exposed is low relative to regional population.

Negligible Impact and Small Numbers Analysis

NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers:

(1) The number of anticipated mortalities;

(2) The number and nature of anticipated injuries;

(3) The number, nature, and intensity, and duration of Level B harassment; and

(4) The context in which the takes occur.

As mentioned previously, NMFS estimates that 21 species of marine mammals (including three species categorized as *Mesoplodon* sp.) could be potentially affected by Level B harassment over the course of the IHA. For each species, these numbers are small (each, less than one percent) relative to the population size.

No takes by (Level A harassment), serious injury, or mortality are anticipated to occur as a result of the SIO's marine geophysical survey, and none are authorized. Only short-term behavioral disturbance is anticipated to occur due to the brief and sporadic duration of the survey activities, and these takes are not expected to occur in a place that is of specific biological importance to marine mammals, such as in a known breeding, calving, or feeding area, as no such times or places are known for the project location or time. If such a place, previously unknown, does exist in the project area, NMFS would still anticipate that the impacts would be negligible due to their temporary nature in space and time. Due to the nature, degree, and context of the behavioral harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

For reasons stated previously, the specified activities associated with the survey are not likely to cause TTS, PTS or other non-auditory injury, serious injury, or death to affected marine mammals because:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The fact that cetaceans would have to be closer than 40 m (0.025 mi) in deep water when the full array is in use at a 2 m (6.6 ft) tow depth from the vessel to be exposed to levels of sound

believed to have even a minimal chance of causing PTS;

(3) The fact that marine mammals would have to be closer than 400 m (0.25 mi) in deep water when the full array is in use at a 2 m (6.6 ft) tow depth from the vessel to be exposed to levels of sound (160 dB) believed to have even a minimal chance at causing TTS; and

(4) The likelihood that marine mammal detection ability by trained observers is high at that short distance from the vessel;

(5) The incorporation of other required mitigation measures (*i.e.,* ramp-up, shut-down, temporal and spatial avoidance, and additional mitigation measures); and

(7) The relatively limited duration and geographically widespread distances of the seismic survey (approximately 15 days).

As a result, no take by injury, serious injury, or death is anticipated or authorized, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the monitoring and mitigation measures.

While the number of marine mammals potentially incidentally harassed will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential Level B incidental harassment takings (see Table 2) is estimated to be small, less than one percent of any of the estimated population sizes based on the data disclosed in Table 2 of this notice, and has been mitigated to the lowest level practicable through incorporation of the monitoring and mitigation measures mentioned previously in this document. Also, there are no known important reproductive or feeding areas in the action area.

NMFS has determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting a marine geophysical survey in the ETP, October through November 2010, may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals.

While behavioral modifications, including temporarily vacating the area during the operation of the airgun(s), may be made by these species to avoid the resultant acoustic disturbance, the availability of alternate areas within these areas and the short and sporadic duration of the research activities, have led NMFS to determine that this action will have a negligible impact on the species in the specified geographic region.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that SIO's planned research activities, will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the marine geophysical survey will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act

Of the 21 species of marine mammals that may occur in the survey area, three are listed as endangered under the ESA, including the humpback, blue, and sperm whales. Under Section 7 of the ESA, NSF had initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Division, on this seismic survey. NMFS' Office of Protected Resources, Permits, Conservation and Education Division, also initiated formal consultation under Section 7 of the ESA with NMFS' Office of Protected Resources, Endangered Species Division, to obtain a Biological Opinion (BiOp) evaluating the effects of issuing the IHA on threatened and endangered marine mammals and, consistent with the requirements for mitigation and monitoring set forth in the IHA, authorizing incidental take. On October 15, 2010, NMFS concluded formal Section 7 consultation with itself and issued a BiOp which concluded that the proposed action and issuance of the IHA are not likely to jeopardize the continued existence of the humpback, blue, and sperm whales and leatherback (*Dermochelys coriacea*), green (*Chelonia mydas*), loggerhead (*Caretta caretta*), hawksbill (*Eretmochelys imbricata*), and olive ridley (*Lepidochelys olivacea*) sea turtles. The BiOp also concluded that designated critical habitat for these species does not occur in the action area and would not be affected by the survey. SIO must comply with the Relevant Terms and Conditions of the Incidental Take Statement corresponding to NMFS' BiOp issued to both NSF and NMFS' Office of Protected Resources.

National Environmental Policy Act (NEPA)

To meet NMFS' National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) requirements for the issuance of an IHA to SIO, NMFS has prepared an Environmental Assessment (EA) titled "*Issuance of an Incidental Harassment Authorization to the Scripps Institution of Oceanography to Take Marine Mammals by Harassment Incidental to a Marine Geophysical Survey off of Central and South America in the Eastern Tropical Pacific Ocean, October-November 2010*". This EA incorporates by reference the NSF's Environmental Analysis Pursuant To Executive Order 12114 (NSF, 2010) and an associated report (Report) prepared by LGL Limited Environmental Research Associates (LGL) for NSF, titled, "*Environmental Assessment of a Marine Geophysical Survey by the R/V Melville in the Pacific Ocean off Central and South America, October-November 2010*" (LGL, 2010) by reference pursuant to 40 Code of Federal Regulations (CFR) 1502.21 and NOAA Administrative Order (NAO) 216–6 § 5.09(d). NMFS' EA analyzes the direct, indirect and cumulative environmental impacts of the specified activities on marine mammals including those listed as threatened or endangered under the ESA. NMFS also evaluated and considered comments provided by the public in finalizing the EA and addressing the intensity of impacts to marine mammals

The NMFS has made a Finding of No Significant Impact (FONSI) and, therefore, will not prepare an environmental impact statement for the issuance of an IHA to SIO for this activity. The EA and the NMFS FONSI for this activity are available upon request (see **ADDRESSES**).

Determinations

NMFS has determined that the impact of conducting the specific seismic survey activities described in this notice and the IHA request in the specific geographic region in the eastern tropical Pacific Ocean may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. Further, this activity is expected to result in a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses is not implicated for this action.

Authorization

As a result of these determinations, NMFS proposes to issue an IHA to SIO for conducting a marine geophysical survey in the eastern tropical Pacific Ocean, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The duration of the IHA would not exceed one year from the date of its issuance.

Dated: October 15, 2010.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–26547 Filed 10–20–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ53

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; annual affirmative finding renewal.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) has renewed the affirmative finding for the Government of El Salvador under the Marine Mammal Protection Act (MMPA). This affirmative finding will allow yellowfin tuna harvested in the eastern tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation Program (IDCP) by El Salvadorian-flag purse seine vessels or purse seine vessels operating under El Salvadorian jurisdiction to be imported into the United States. The affirmative finding was based on review of documentary evidence submitted by the Government of El Salvador and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the U.S. Department of State.

DATES: The affirmative finding renewal is effective from April 1, 2010, through March 31, 2011.

FOR FURTHER INFORMATION CONTACT: Sarah Wilkin, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213; phone 562–980–3230; fax 562–980–4027.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.,* allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation is meeting its obligations under the IDCP and obligations of membership in the IATTC. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. On an annual basis, NMFS will review the affirmative finding and determine whether the harvesting nation continues to meet the requirements. A nation may provide information related to compliance with IDCP and IATTC measures directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS to annually renew an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Republic of El Salvador or obtained from the IATTC and the Department of State and has determined that El Salvador has met the MMPA's requirements to receive an annual affirmative finding renewal.

After consultation with the Department of State, the Assistant Administrator issued the Republic of El Salvador's annual affirmative finding renewal, allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by El Salvadorian-flag purse seine vessels or purse seine vessels operating under El Salvadorian jurisdiction. This annual renewal of El Salvador's affirmative finding will remain valid through March 31, 2011.

Dated: October 15, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–26652 Filed 10–20–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement (SEIS), Mississippi Barrier Island Restoration, Mississippi Coastal Improvements Program (MsCIP) for Hancock, Harrison, and Jackson Counties, MS

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Mobile District, U.S. Army Corps of Engineers (Corps), intends to prepare a Draft Supplemental Environmental Impact Statement (DSEIS) to the MsCIP Comprehensive Plan and Integrated Programmatic EIS, prepared in June 2009, which evaluated comprehensive water resource improvements associated with hurricane and storm damage risk reduction, shoreline erosion, salt water intrusion and fish and wildlife preservation in three coastal counties of Mississippi. As described in the Comprehensive Plan, the SEIS will address potential impacts associated with the comprehensive restoration of the Mississippi barrier islands. These actions are related to the consequences of hurricanes in the Gulf of Mexico in 2005 and will be used as a basis for ensuring compliance with the National Environmental Policy Act (NEPA).

ADDRESSES: Questions about the proposed action and the DSEIS should be addressed to Mr. Larry Parson, or Dr. Susan Ivester Rees, Planning and Environmental Division, Mobile District, U.S. Army Corps of Engineers, P.O. Box 2288, Mobile, AL 36628–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Parson, (251) 694–3139 or e-mail at *larry.e.parson@usace.army.mil* or Dr. Susan Ivester Rees, (251) 694–414, or e-mail at *susan.i.rees@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Hurricane Katrina made landfall in Mississippi on August 29, 2005 causing catastrophic damage to lives, property, and natural resources throughout coastal Mississippi. In response, the U.S. Congress directed the Secretary of the Army through the Corps of Engineers (the Corps) to conduct an

analysis and design for comprehensive improvements or modifications to existing improvements in the coastal area of Mississippi in the interest of hurricane and storm damage reduction, prevention of saltwater intrusion, preservation of fish and wildlife, prevention of erosion, barrier island restoration, and other related water resources purposes. Further, the Corps was directed to provide interim recommendations for near term improvements by June 30, 2006, with final recommendations provided by December 30, 2007. Environmental impacts associated with implementation of 15 interim projects were addressed in an Environmental Assessment and a Finding of No Significant Impact signed on June 29, 2006.

2. The MsCIP Comprehensive Plan evaluated an array of measures to promote the recovery of coastal Mississippi from the hurricanes of 2005 and to provide for a coast resilient to future storm events. The Integrated Programmatic EIS evaluated multiple natural and engineered alternatives to provide various measures for various levels of risk reduction and restoration for the Mississippi coast. Formulation of the comprehensive plan involved identifying potential "Lines of Defense" moving from offshore to nearshore, shoreline, and along existing natural features inland, to possibly reduce damage from hurricane and storm events. This analysis included restoration of the barrier islands, nearshore features such as rubble and movable wall breakwaters, beachfront measures such as dunes, berms, and seawalls, coastal roadways and beach front property barriers such as elevation of roadways and property, and various other inland features such as installation of levees, elevated highway-topped levee systems, and surge protection gates, for potential inclusion in the overall damage reduction system. Consideration of "non-structural measures", such as acquisition and relocation of structures, hurricane evaluation, floodplain management, building codes and other event planning activities also serve as important hurricane and storm damage reduction planning features. Other alternatives considered restoration of storm damaged habitats such as coastal marshes, beaches, forests, oyster reefs, and submerged aquatic vegetation in Mississippi Sound and on the Mississippi mainland; restoration of historical water flows to coastal watersheds including freshwater diversion from Louisiana; and watershed based drainage modifications for flood damage reduction. The EIS identified, screened, evaluated, prioritized, and optimized an array of alternatives.

3. The Draft SEIS. As discussed in the Integrated Programmatic EIS, a supplement would be prepared to address the borrow sources and placement areas for the Mississippi Barrier Islands Restoration. This is phase II of the plan described in the Programmatic EIS. Under phase I, the general plan of the barrier islands restoration was addressed; however the final design was not completed because the borrow sources were not identified.

The Comprehensive Barrier Island Restoration consists of the placement of approximately 22 million cubic yards of sand within the National Park Service's Gulf Islands National Seashore, Mississippi unit. Between 13–16 million cubic yards of sand would be used to close Camille Cut between East Ship Island and West Ship Island, which originally was opened by Hurricane Camille, through the construction of a low level dune system. The remaining sand would be placed in the littoral zones at the eastern ends of Ship and Petit Bois Islands. This would result in the restoration of 1,150 acres of critical coastal zone habitats and improvement to the water quality of the Mississippi Sound and provide incidental protection to two cultural sites on Ship Island listed on the National Register of Historic Places. In addition, the project would include the restoration of Cat Island using 1–2 million cubic yards of sand which are not included in the 22 million cubic yards of sand.

4. Public Involvement: a. The Corps has conducted extensive public involvement during the Comprehensive Plan and Integrated Programmatic EIS of June 2009. Since April 2006, the Corps Mobile District has hosted over 90 public involvement events, including 12 formal public and agency meetings, a 2-day Regional coordination meeting, a Public Scoping workshop, 3 online meetings, a Public Hearing workshop, and numerous internal meetings, which the agencies were invited to participate. The Corps also launched a project website enabling user downloads, project team collaboration, and communication among agencies and the public. This Web site will be updated with information on the SEIS for the Mississippi Barrier Island Restoration Project throughout the NEPA process: *http://www.mscip.usace.army.mil.*

b. The SEIS will analyze potential environmental impacts and benefits associated with proposed borrow and placement sites. Specifically, the following major issues will be analyzed in the SEIS: Water quality, threatened and endangered species, essential fish habitat and other marine habitat, cultural resources, parks and protected lands, wetlands, and cumulative impacts.

c. The Corps will serve as the lead Federal agency during preparation of the SEIS. The following agencies have been invited to participate as cooperating agencies: U.S. Environmental Protection Agency; U.S. Department of the Interior—Fish and Wildlife Service, National Park Service, U.S. Geological Survey, U.S. Department of Transportation—Federal Highway Administration; U.S. Department of Commerce—National Oceanic and Atmospheric Administration and the National Marine Fisheries Service; U.S. Department of Homeland Security—Federal Emergency Management Agency; U.S. Department of Agriculture—Natural Resources Conservation Service; Mississippi Department of Marine Resources; Mississippi Department of Environmental Quality, and Mississippi Department of Archives and History; Mississippi Museum of Natural Science; Mississippi Department of Transportation; Mississippi Emergency Management Agency and the Gulf Regional Planning Commission. Participation from other agencies, interest groups, and individual citizens is being encouraged and sought.

5. It is anticipated that the SEIS will be made available for public review in December 2010.

Curtis M. Flakes,

Chief, Planning and Environmental Division.

[FR Doc. 2010–26493 Filed 10–20–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976, and Federal regulations governing advisory committee meetings, the Department of Defense announces a Federal advisory committee meeting for the United States Military Academy Board of Visitors. This is the 2010 Annual Meeting of the USMA Board of Visitors. Members of the Board will be provided updates on Academy issues.

DATES: Friday, November 5, 2010 at 1 p.m.–3 p.m.

ADDRESSES: Jefferson Hall Library, Haig Room, West Point, NY.

FOR FURTHER INFORMATION CONTACT: The Committee's Designated Federal Officer or Point of Contact is Ms. Joy A. Pasquazi, (845) 938–5078, *Joy.Pasquazi@us.army.mil.*

SUPPLEMENTARY INFORMATION: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting will take place:

1. *Name of Committee:* United States Military Academy Board of Visitors.

2. *Date:* Friday, November 5, 2010.

3. *Time:* 1 p.m.–3 p.m. Members of the public wishing to attend the meeting will need to show photo identification in order to gain access to the meeting location. All participants are subject to security screening.

4. *Location:* Jefferson Hall Library, Haig Room, West Point, NY.

5. *Purpose of the Meeting:* This is the 2010 Annual Meeting of the USMA Board of Visitors (BoV). Members of the Board will be provided updates on Academy issues.

6. *Agenda:* The Academy leadership will provide the Board updates on the following: Education and Academic Instruction, Military Construction Real Property Master Plan, Sustainment, renovation and Maintenance Program, Fiscal Year 2010.

7. *Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

8. *Committee's Designated Federal Officer or Point of Contact:* Ms. Joy A. Pasquazi, (845) 938–5078, *Joy.Pasquazi@us.army.mil.*

Any member of the public is permitted to file a written statement with the USMA Board of Visitors. Written statements should be sent to the Designated Federal Officer (DFO) at: United States Military Academy, Office of the Secretary of the General Staff (MASG), 646 Swift Road, West Point, NY 10996–1905 or faxed to the Designated Federal Officer (DFO) at (845) 938–3214. Written statements must be received no later than five working days prior to the next meeting in order to provide time for member consideration. By rule, no member of the public attending open meetings will be allowed to present questions from the floor or speak to any issue under consideration by the Board.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–26492 Filed 10–20–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2010–0027]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Air Force is proposing to add a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on November 22, 2010, unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843 Pentagon, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, 703–696–6488.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330–1800.

The proposed systems report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on October 5, 2010, to the House Committee on Oversight and Government Reform, and the Senate Committee on Homeland Security and Governmental Affairs pursuant to paragraph 4c of Appendix I to Office of Management and Budget Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: October 18, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

FO36 AFOSI E

SYSTEM NAME:

Command Learning Management System.

SYSTEM LOCATION:

Headquarters, Air Force Office of Special Investigations (AFOSI), 1535 Command Drive, Andrews AFB, MD 20762–7002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel on active and reserve duty, Air Force civilians and contractors assigned to or employed either directly or indirectly by the Air Force Office of Special Investigations (AFOSI). Also includes AFOSI personnel assigned to any Department of Defense (DoD) activity or DoD sponsored program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records concerning completion of all training courses attended, course certification, records of ancillary training completion and weapons qualification. Record data includes name, Social Security Number (SSN), home address and work telephone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; AFI 36–2201 V1, Training Development, Delivery and Evaluation; Air Force Mission Directive 39, Air Force Office of Special Investigations (AFOSI); Air Force Policy Directive 71–1, Criminal Investigations and Counterintelligence; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Used by the Air Force Special Investigations Academy (AFSIA) training monitors, supervisors and personnel to identify, monitor and schedule Air Force and AFOSI

mandated training. The system maintains each individuals training history and is a repository for historical documentation such as certificates and transcripts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552A(b) of the Privacy Act of 1974, these records contained therein may be specifically disclosed outside the Department of Defense as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by individual's name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties, properly screened and cleared for need-to-know. Records are stored on the Learning Management System computer server located behind a Virtual Private Network (VPN) controlled by AFOSI and accessible only by persons cleared for access to the network.

RETENTION AND DISPOSAL:

Retained in database until reassignment outside of AFOSI or separation/retirement; records are destroyed within 365 days after such actions by the data base administrator. Back-up tapes are overwritten every three weeks removing any inactive records.

SYSTEM MANAGER(S) AND ADDRESS:

Director of War Fighting Integration, HQ AFOSI/XI, 1535 Command Drive, Andrews AFB, MD 20762–7002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Chief, Information Release Branch, HQ AFOSI/XILI, ATTN: Freedom of Information/Privacy Act Officer, P.O. Box 2218, Waldorf, MD 20604–2218.

Individuals should complete AFOSI's Certification of Identity, Freedom of Information and Privacy Act request form giving their contact information (name, address, phone number, contact e-mail address, and a brief description of the information they are seeking) and are required to sign and date the penalty of perjury clause attesting that they are the person they say they are.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves should address written inquiries to the Chief, Information Release Branch, HQ AFOSI/XILI, ATTN: Freedom of Information/Privacy Act Officer, P.O. Box 2218, Waldorf, MD 20604–2218.

Individuals should complete AFOSI's Certification of Identity, Freedom of Information and Privacy Act request form giving their contact information (name, address, phone number, contact e-mail address, and a brief description of the information they are seeking) and are required to sign and date the penalty of perjury clause attesting that they are the person they say they are.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, individual training records, and the Security Forces Management Information System (SFMIS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–26517 Filed 10–20–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before November 22, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: October 14, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title of Collection: Rehabilitation Services Administration Grant Reallotment Form.

OMB Control Number: 1820–0692.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies or Local Education Agencies.

Total Estimated Number of Annual Responses: 402.

Total Estimated Annual Burden Hours: 12.

Abstract: The Rehabilitation Act of 1973, as amended, authorizes the commissioner to reallot to other grant recipients that portion of a recipient's annual grant that cannot be used. To maximize the use of appropriated funds under the formula grant programs, the

Office of Special Education and Rehabilitative Services has established a reallotment process for the Basic Vocational Rehabilitation State Grants; Supported Employment State Grants; Independent Living State Grants, Part B (IL–Part B); Independent Living Services for Older Individuals Who Are Blind (IL–OB); Client Assistance (CAP) and Protection and Advocacy of Individual Rights (PAIR) Programs. The authority for the Rehabilitation Services Administration to reallot formula grant funds is found at sections 110(b)(2) (VR), 622(b) (SE), 711(c) (IL–Part B), 752(j)(4) (IL–OB), 112(e)(2) (CAP), and 509(e) (PAIR) of the act. The information will be used by the awards mentioned above. For each grant award, the grantee will be required to enter the amount of funds being relinquished and/or any additional funds being requested.

The information will be used by the Rehabilitation Services Administration State Monitoring and Program Improvement Division to reallot formula grant funds for the awards mentioned above. Currently, the information is collected through the issuance of an annual Information Memorandum for each grant award; the grantee will be required to enter the amount of funds being relinquished and/or any additional funds being requested.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4410. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–26501 Filed 10–20–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–584]

Duke Energy Carolinas, LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

October 13, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for non-project use of project lands and waters.

b. *Project No:* 2232–584.

c. *Date Filed:* September 23, 2010.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* Lake Wylie in Mecklenburg County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Kelvin Reagan, P.O. Box 1006, Charlotte, North Carolina, 28201–1006. Tel: (704) 382–9386.

i. *FERC Contact:* Mark Carter, telephone (678) 245–3083, and e-mail *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* November 15, 2010.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-filing" link. The Commission strongly encourages electronic filings.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2232–584) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* The licensee requests Commission approval to grant DR Horton, Inc. (applicant) a lease of 2.26 acres of project lands for use as a residential marina to serve off-water residents of the Vineyards on Lake Wylie. The proposed marina would consist of six cluster docks (to accommodate 48 watercraft), a boat ramp, a courtesy dock, and a canoe launch dock. Additionally, the applicant would install riprap along 1,625 feet of shoreline, and remove 6,130 cubic yards of sediment from the reservoir.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field (P–2232) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the project number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be

obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–26480 Filed 10–20–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–1–000; Docket No. PR11–2–000; Docket No. PR11–3–000]

Notice of Baseline Filings

October 14, 2010.

Cranberry Pipeline Corporation	Docket No. PR11–1–000
New Mexico Gas Company, Inc	Docket No. PR11–2–000
Peoples Natural Gas Company LLC	Docket No. PR11–3–000 (Not Consolidated)

Take notice that on October 8, 2010, and October 13, 2010, respectively the applicants listed above submitted their baseline filing of its Statement of Operating Conditions for services provided under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Monday, October 25, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–26482 Filed 10–20–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–11–003]

ECOP Gas Company, LLC; Notice of Compliance Filing

October 13, 2010.

Take notice that on October 8, 2010, ECOP Gas Company, LLC (ECOP) filed its Refund Report pursuant to its July 30, 2010, Settlement Agreement approved by an August 12, 2010, Letter Order.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time Friday, October 22, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–26481 Filed 10–20–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Nationwide Limited Public Interest Waiver Under Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (Recovery Act)

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

ACTION: Notice of limited waiver.

SUMMARY: The U.S. Department of Energy (DOE) is hereby granting an Amended nationwide limited waiver of the Buy American requirements of section 1605 of the Recovery Act under the authority of Section 1605(b)(1) (amended public interest waiver), with respect to the following solar photo-

voltaic (PV) equipment:
(1) Domestically-manufactured modules containing foreign-manufactured cells, (2) foreign-manufactured modules, when completely comprised of domestically-manufactured cells, and (3) any ancillary items and equipment (including, but not limited to, charge controllers, combiners and disconnect boxes, breakers and fuses, racks, trackers, lugs, wires, cables and all otherwise incidental equipment with the exception of inverters and batteries) when utilized in a solar installation involving a U.S. manufactured PV module, or a module manufactured abroad but comprised exclusively of domestically-manufactured cells. This waiver expires February 6, 2011 (six months from the date of the original waiver issuance). Recipients of EERE Recovery Act funds who have taken substantial steps to commit funds for the purchase of the items covered in this waiver by February 6, 2011 will not be impacted by the expiration of this waiver.

This amended determination clarifies and supersedes the solar public interest waiver issued on August 6, 2010. Specifically, this amended public interest determination clarifies that thin-film and flexible PV installations are also subject to the terms of this waiver.

DATES: *Effective Date:* September 30, 2010.

FOR FURTHER INFORMATION CONTACT: Benjamin Goldstein, Recovery Act Buy American Coordinator, Weatherization and Intergovernmental Program, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287–1553, *buyamerican@ee.doe.gov,* Department of Energy, 1000 Independence Avenue, SW., Mailstop EE–2K, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: Under the authority of the Recovery Act, section 1605(b)(1), the head of a Federal department or agency may issue a "determination of inapplicability" (a waiver of the Buy American provisions) if the application of section 1605 would be inconsistent with the public interest. On November 10, 2009, the Secretary of Energy delegated the authority to make all inapplicability determinations to the Assistant Secretary for Energy Efficiency and Renewable Energy, for EERE Recovery Act projects.

Pursuant to this delegation, the Assistant Secretary has determined that application of section 1605 restrictions would be inconsistent with the public interest for incidental and/or ancillary solar Photovoltaic (PV) equipment, when this equipment is utilized in solar installations containing domestically manufactured PV cells or modules (panels).

This amended determination clarifies and supersedes the solar public interest waiver issued on August 6, 2010. Specifically, this amended public interest determination clarifies that thin-film and flexible PV installations are also subject to the terms of this waiver.

This amended public interest determination waives the Buy American requirements in EERE-funded Recovery Act projects for the purchase of the following solar PV equipment:
(1) Domestically-manufactured modules containing foreign-manufactured cells, (2) foreign-manufactured modules, when completely comprised of domestically-manufactured cells, and (3) any ancillary items and equipment (including, but not limited to, charge controllers, combiners and disconnect boxes, breakers and fuses, racks, trackers, lugs, wires, cables and all otherwise incidental equipment with the exception of inverters and batteries) when utilized in a solar installation involving a U.S. manufactured PV module, or a module manufactured abroad but comprised exclusively of domestically-manufactured cells. This waiver expires February 6, 2011 (six months from the date of the original waiver issuance). Recipients of EERE Recovery Act funds who have taken substantial steps to commit funds for the purchase of the items covered in this waiver by February 6, 2011 will not be impacted by the expiration of this waiver.

Definitions—Solar *cells* are the basic building block of PV technologies. The cells are functional semiconductors, made by processing and treating crystalline silicon or other photo-sensitive materials to create a layered product that generates electricity by absorbing light photons. The individual cells are cut and/or assembled into larger groups known as *panels* or *modules.* These two terms are synonymous and used interchangeably in this memorandum. The panel is the end product, and consists of a series of solar cells, a backing surface, and a covering to protect the cells from weather and other types of damage. A solar *array* is created by installing multiple modules in the same location to increase the electrical generating capacity. Operational solar PV modules and arrays use cells to capture and transfer solar-generated electricity. The solar modules and cells represent the highest intellectual content and dollar-value items associated with solar PV energy generation.

The Buy American provisions contain no requirement with regard to the origin of components or subcomponents in manufactured goods used in a project, as long as the manufacturing occurs in the United States [(2 CFR 176.70(a)(2)(ii)]. However, determining where final manufacturing occurs in the context of the solar production chain is complicated. Under a plain reading of the Recovery Act Buy American provisions, only the PV modules would need to be manufactured in the United States, but the source of the component parts—including the high-value cells—would not be relevant to complying with the Buy American requirements.

EERE and the National Renewable Energy Laboratory have conducted extensive research into the nature of the domestic solar manufacturing industry to determine the best way to apply the Buy American requirements to solar PV projects. EERE considered three basic options: (1) Follow the current interpretation of the Buy American provisions and require that only the modules be produced in the United States, irrespective of the origin of the cells contained in the modules;
(2) apply the interpretation that the modules and cells are distinct manufactured goods and thus both must be produced in the United States; and (3) choose a more inclusive approach that allows a solar installation to comply if either the cells or the modules are manufactured in the United States.

Of the options considered, only option (3) recognizes EERE's determination that the manufacturing process for cells and the final PV module production represent distinct and significant stages in the solar PV manufacturing chain. Conducting either of these discrete activities in the United States creates roughly equal numbers of American jobs. Furthermore, the design and manufacture of the cells captures the largest portion of the intellectual property present in a solar installation.

For all the reasons outlined above, EERE believes the public interest is best served by supporting the domestic cell manufacturing industry. It is therefore in the public interest to issue a waiver of the Recovery Act Buy American provisions that allows grantees to purchase foreign modules made with domestically-manufactured cells, in addition to domestic modules with foreign-produced cells.

Because EERE believes strongly in strengthening the domestic PV manufacturing supply chain in the United States, EERE is limiting the duration of this waiver to six months from the date it was originally issued, with the expectation that there will be

an increase in the number of companies that produce solar PV modules in the United States containing domestically-manufactured cells.

This amended public interest waiver determination also resolves questions regarding the applicability of the Buy American provisions to numerous individual manufactured goods that are incidental in cost and technological significance but are ultimately incorporated into the final solar installation. These items, including, but not limited to, charge controllers, combiners and disconnect boxes, breakers and fuses, racks, trackers, lugs, wires, and cables—but excluding inverters and batteries—are generally low-cost incidental items that are incorporated into the installation of PV modules and arrays on public buildings and public works. This public interest waiver for all incidental and ancillary items eliminates potential questions and ambiguities concerning whether the incidental items are final manufactured goods or merely components of a larger solar module, installation or array.

Issuance of this nationwide public interest waiver recognizes EERE's commitment to expeditious costing of Recovery Act dollars by enabling recipients to easily ascertain whether a given solar installation complies with the Buy American provision. Simultaneously, this waiver advances the purpose and the principles of the Buy American provision by focusing on the highest-value and most labor-intensive pieces of solar PV equipment.

In light of the foregoing, and under the authority of section 1605(b)(1) of Public Law 111–5 and Redelegation Order 00–002–01C, dated November 10, 2009, with respect to Recovery Act projects funded by EERE, the Assistant Secretary hereby issues an amended "determination of inapplicability" (a waiver under the Recovery Act Buy American provisions) for the following items: (1) Domestically-manufactured modules containing foreign-manufactured cells, (2) foreign-manufactured modules, when completely comprised of domestically-manufactured cells, and (3) any ancillary items and equipment (including, but not limited to, charge controllers, combiners and disconnect boxes, breakers and fuses, racks, trackers, lugs, wires, cables and all otherwise incidental equipment with the exception of inverters and batteries) when utilized in a solar installation involving a U.S. manufactured PV module, or a module manufactured abroad but comprised exclusively of domestically-manufactured cells. This waiver expires February 6, 2011 (six months from the date of the original waiver issuance). Recipients of EERE Recovery Act funds who have taken substantial steps to commit funds for the purchase of the items covered in this waiver by February 6, 2011 will not be impacted by the expiration of this waiver. Furthermore, the Assistant Secretary reserves the right to revisit and amend this determination based on new information or new developments.

Authority: Public Law 111–5, section 1605.

Issued in Washington, DC, on September 30, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy.

[FR Doc. 2010–26518 Filed 10–20–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD09–9–000]

Small Hydropower Development in the United States; Notice of Small/Low-Impact Hydropower Webinar

October 13, 2010.

The Federal Energy Regulatory Commission will host a Small/Low-Impact Hydropower Webinar on November 10, 2010, from 12 noon to 1 p.m. Eastern Time. The webinar will be open to the public and advance registration is required.

The purpose of this webinar is to introduce the new Small/Low-Impact Hydropower Program website and walk participants through all phases of the licensing and exemption processes using the Web site. Specifically, the webinar will provide the opportunity for participants to learn about the small hydropower licensing process, find out how to get more information and assistance from FERC, and ask questions.

To register for this webinar, please go to *https://www.ferc.gov/whats-new/registration/hydro-form-11-10-10.asp.* Space is limited to the first 98 reservations. Once registered, you will receive a confirmation e-mail containing information about joining the webinar a few days prior to the start of the webinar.

For more information about this webinar, please contact Shana Murray at (202) 502–8333 or *shana.murray@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–26479 Filed 10–20–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Nationwide Categorical Waivers Under Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (Recovery Act)

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

ACTION: Notice of limited waivers.

SUMMARY: The U.S. Department of Energy (DOE) is hereby granting a nationwide limited waiver of the Buy American requirements of section 1605 of the Recovery Act under the authority of Section 1605(b)(2) (iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality) with respect to: (1) Motorized automatic two wing revolving doors that open via the motor upon a fire alarm to accommodate smoke evacuation, retract to full open position under Fire Alarm status and remain in the open position until the alarm is cleared, are compliant with the Americans with Disabilities Act, and possess both sliding and swinging door that allows entry/exit through the sliding doors while the revolving section is being serviced; (2) self-contained photovoltaic LED area lighting systems with a non-corrosive, stainless steel, powder-coated anti-weathering shell, that do not succumb to the sail effect, possess flat plate lens optics with directional lamp lens, dark sky capability, and full cutoff conformity; (3) ultrasonic directional sensors and DC300 facility controllers for a parking guidance system which integrates with American designed intelligent parking guidance system software allowing real-time updates to a central location and via the Internet; (4) load Management Ripple Control Receivers for an existing load management system; and (5) LED tube lights to replace T8 fluorescents that meet the April 2010 DOE recommended performance specifications that will be used on eligible EERE-Recovery Act funded projects.

DATES: *Effective Date:* September 30, 2010.

FOR FURTHER INFORMATION CONTACT: Benjamin Goldstein, Energy Technology Program Specialist, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287–1553, Department of Energy, 1000 Independence Avenue, SW., Mailstop EE–2K, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: Under the authority of the Recovery Act, Public Law 111–5, section 1605(b)(2), the head of a Federal department or agency may issue a "determination of inapplicability" (a waiver of the Buy American provision) if the iron, steel, or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality ("nonavailability"). On November 10, 2009, the Secretary of Energy delegated the authority to make all inapplicability determinations to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act. Pursuant to this delegation the Assistant Secretary, EERE, has concluded that (1) motorized automatic two wing revolving doors that open via the motor upon a fire alarm to accommodate smoke evacuation, retract to full open position under Fire Alarm status and remain in the open position until the alarm is cleared, are compliant with the Americans with Disabilities Act, and possess both sliding and swinging door that allows entry/exit through the sliding doors while the revolving section is being serviced; (2) self-contained photovoltaic LED area lighting systems with a non-corrosive, stainless steel, powder-coated anti-weathering shell, that do not succumb to the sail effect, possess flat plate lens optics with directional lamp lens, dark sky capability, and full cutoff conformity; (3) ultrasonic directional sensors and DC300 facility controllers for a parking guidance system which integrates with American designed intelligent parking guidance system software allowing real-time updates to a central location and via the Internet; (4) Load Management Ripple Control Receivers for an existing load management system; and (5) LED tube lights to replace T8 fluorescents that meet the April 2010 DOE recommended performance specifications, available at *http://apps1.eere.energy.gov/buildings/publications/pdfs/ssl/t8_replacement-lamps.pdf* that will be used on eligible EERE-Recovery Act funded projects qualify for the "nonavailability" waiver determination.

EERE has developed a robust process to ascertain in a systematic and expedient manner whether or not there is domestic manufacturing capacity for the items submitted for a waiver of the Recovery Act Buy American provision. This process involves a close collaboration with the United States Department of Commerce National Institute of Standards and Technology (NIST) Manufacturing Extension Partnership (MEP), in order to scour the domestic manufacturing landscape in search of producers before making any nonavailability.

The NIST MEP has 59 regional centers with substantial knowledge of, and connections to, the domestic manufacturing sector. MEP uses their regional centers to 'scout' for current or potential manufacturers of the product(s) submitted in a waiver request. In the course of this interagency collaboration, MEP has been able to find exact or partial matches for manufactured goods that EERE grantees had been unable to locate. As a result, in those cases, EERE was able to work with the grantees to procure American-made products rather than granting a waiver.

Upon receipt of completed waiver requests for the five products in the current waiver, EERE reviewed the information provided and submitted the relevant technical information to the NIST MEP. The MEP then used their network of nationwide centers to scout for domestic manufacturers. The NIST MEP reported that their scouting process did not locate any domestic manufacturers for these exact or equivalent items.

In addition to the MEP collaboration outlined above, the EERE Buy American Coordinator worked with labor unions, trade associations and other manufacturing stakeholders to scout for domestic manufacturing capacity or an equivalent product for each item contained in this waiver. EERE also conducted significant amounts of independent research to supplement MEP's scouting efforts, including utilizing the solar experts employed by the Department of Energy's National Renewable Energy Laboratory. EERE's research efforts confirmed the MEP findings that the goods included in this waiver are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The nonavailability determination is also informed by the inquiries and petitions to EERE from recipients of EERE Recovery Act funds, and from suppliers, distributors, retailers and trade associations—all stating that their individual efforts to locate domestic manufacturers have been unsuccessful.

Having established a proper justification based on domestic nonavailability, EERE hereby provides notice that on September 30, 2010 five nationwide categorical waivers of section 1605 of the Recovery Act were issued as detailed *supra.* This notice constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

This waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Assistant Secretary for Energy Efficiency and Renewable Energy with respect to expenditures within the purview of her responsibility. Consequently, this waiver applies to EERE projects carried out under the Recovery Act.

Authority: Pub. L. 111–5, section 1605.

Issued in Washington, DC, on September 30, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy.

[FR Doc. 2010–26507 Filed 10–20–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9216–6]

Access in Litigation to Confidential Business Information

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of Transfer of Information Claimed as Confidential Business Information to the United States Department of Justice and Parties to Certain Litigation.

SUMMARY: The EPA has authorized the United States Department of Justice ("DOJ") to disclose, in response to discovery requests received in the litigation styled, *Tronox Incorporated, et al.,* v. *Anadarko Petroleum Corp., et al.,* Adv. Proc. No. 09–01198 (ALG), pending in the United States Bankruptcy Court for the Southern District of New York (the "Litigation"), information which has been submitted to EPA by its contractors that is claimed to be, or has been determined to be, confidential business information ("CBI"). The EPA is providing notice of past disclosure and of ongoing and contemplated future disclosure. Interested persons may submit comments on this Notice to the address noted below.

DATES: Access by the DOJ and/or the parties to the Litigation to material discussed in this Notice that has been either claimed or determined to be CBI is ongoing, and is expected to continue in the future during the pendency of the Litigation. The EPA will accept comments on this Notice through October 30, 2010.

ADDRESSES: For further information contact Craig Kaufman, Attorney-Advisor, Office of Site Remediation Enforcement, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (Mail Code 2272A), Washington, DC 20460; telephone number: (202) 564–4284; e-mail address: *kaufman.craig@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 40 CFR 2.209(c)(1), the EPA has disclosed information, including CBI, to the DOJ in response to a written request for information from the DOJ and/or on the initiative of the EPA because such disclosure was necessary to enable the DOJ to carry out a litigation function on behalf of the EPA. The DOJ has been served with discovery requests seeking, among other things, documentation supporting the proofs of claim filed by the United States of America in the bankruptcy styled, *In re Tronox Incorporated, et al.,* Case No. 09–10156 (ALG) (Chapter 11), pending in the United Stated Bankruptcy Court for the Southern District of New York (the "Bankruptcy"). Those proofs of claim were filed on behalf of, *inter alia,* the EPA regarding the debtors' environmental liabilities, including liabilities at sites at which the EPA's contractors may have provided services.

The parties to the Litigation have entered into an Agreed Protective Order, *see* Document No. 248 in the Bankruptcy docket, as amended on August 12, 2009, *see* Document No. 622 (together, the "AGP"), that will govern the treatment of information, including CBI, that is designated "Confidential" pursuant to the AGP. The AGP provides for limited dissemination of confidential information and for the return or destruction of confidential information at the conclusion of the Litigation. *See, e.g.,* AGP, at ¶¶ 1, 10, 12–16, 21.

In accordance with 40 CFR 2.209(d), the EPA is hereby giving notice that it has authorized the DOJ to disclose information that originated from the EPA to the extent required to comply with the discovery obligations of the United States in the Litigation, including its obligations under the AGP. Accordingly, business information that is ordinarily entitled to confidential treatment under existing Agency regulations (40 CFR Part 2) may be included in the information that the DOJ will release to parties in the Litigation pursuant to the AGP.

As explained by EPA's Office of General Counsel at its Web site, *http://www.epa.gov/ogc/documents.htm,* the CBI that may be disclosed in the Litigation could include, but is not limited to, business information submitted by contractors and prospective contractors, *see generally* Class Determination 1–95; business information submitted in technical and cost proposals, *see generally* Class Determination 2–78; and business information submitted in contract proposals and related documents, *see generally* Class Determination 2–79. CBI may also include information obtained by the EPA under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), including information provided to the EPA, directly or indirectly, pursuant to section 104 of CERCLA. All CBI that is disclosed in the Litigation will be designated "Confidential" pursuant to the AGP.

Information, including CBI, discussed in this Notice may relate to certain companies and agencies that have provided services for the EPA at sites involved in the Litigation, including but not limited to the following: Agency for Toxic Substances and Disease Registry; Alion Science & Technology Corporation; Alpha Woods Hole Laboratories; Arctic Slope Regional Corporation; ASRC Management Services, Incorporated; CDM Federal Programs Corporation; CH2M Hill Incorporated; Clayton Environmental Consultants; Columbia Analytical Services; Computer Services Corporation; Contract Laboratory Program; Datachem Laboratories, Incorporated; DynCorp International; Ecology & Environment, Incorporated; Environmental Control Technology Corporation; EnviroSystems, Incorporated; Foster Wheeler Environmental Corporation; GRB Environmental Services, Incorporated; Illinois Environmental Protection Agency; Industrial Economics, Incorporated; InStep Software, LLC; Integrated Support Systems, Incorporated; Keystone Environmental Resources Incorporated; Lancaster Laboratories; Lata-Kemron Remediation, LLC; Laucks Testing Laboratories, Incorporated; Liberty Analytical Corporation; Lockheed Environment Systems and Technologies Company; Lockheed Environmental & Technologies Remote Sensing Support; Lockheed Martin Services Incorporated; Malcolm Pirnie, Incorporated; Metcalf & Eddy, Incorporated; Mitkem Laboratories; NewFields; OHM Remediation Services Corporation; Resource Applications, Incorporated; Ronson Management Corporation; Routine Analytical Services; Roy F. Weston, Incorporated; Science Applications International Corporation; Special Analytical Services; S.S. Papadopulos & Associates, Incorporated; Stevenson; STN Environmental Joint Venture; TechLaw, Incorporated; Tetra Tech EM Incorporated; The Conti Group; Toeroek Associates, Incorporated; TRC Environmental Corporation; United States Environmental Services, LLC; United States Army Corps of Engineers; United States Department of the Interior; and Westinghouse Remediation Services, Incorporated; Weston Solutions, Incorporated; Wisconsin Department of Natural Resources; WRS Infrastructure and Environment Incorporated; York Laboratories.

Dated: October 18, 2010.

Sandra Connors,

Acting Deputy Director, Office of Site Remediation Enforcement.

[FR Doc. 2010–26524 Filed 10–20–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9216–4]

Science Advisory Board Staff Office Request for Nominations of Experts for the Consultation on Revisions to the Multi-Agency Radiation Survey and Site Investigation Manual

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office is requesting public nominations for technical experts to augment the SAB's Radiation Advisory Committee (RAC) to conduct a consultation on revision to the Multi-Agency Radiation Survey and Site Investigation Manual.

DATES: Nominations should be submitted by November 12, 2010 per instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Dr. K. Jack Kooyoomjian, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2064, or via e-mail at *kooyoomjian.jack@epa.gov.* General

information concerning the EPA Science Advisory Board can be found at the EPA SAB Web site at *http//www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB (42 U.S.C. 4365) is a chartered Federal Advisory Committee that provides independent scientific and technical peer review, advice, consultation, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The Federal Inter-Agency Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) Workgroup plans to issue a Revision 2 to the MARSSIM. The document to be revised, "MARSSIM, Rev.1 (2001)," is available at *http://www.epa.gov/radiation/marssim/obtain.html.* The MARSSIM is the official multi-agency (U.S. EPA, U.S. Nuclear Regulatory Commission, U.S. Department of Energy and U.S. Department of Defense) consensus document on planning, coordinating, evaluating and documenting environmental radiological surveys. The MARSSIM, Rev. 1 (2001) provides explicit guidance to Federal agencies and other parties, including states, site owners, contractors and private entities on how to demonstrate that their site is in compliance with a radiation dose or risk-based regulation, otherwise known as a release criterion.

Specifically, the update to the MARSSIM is anticipated to include incorporation of an improved treatment of measurement uncertainty, additional survey methods made possible by improvements in technology, more extensive discussion on areas of elevated activity [hotspots and Uranium Mill Tailings Radiation Control Act (UMTRCA) standards], and a variety of other improvements resulting from feedback received from users since issuance of the document. The planned revision reflects changes in science and technology, as well as twelve years of combined Federal experience in utilizing MARSSIM. This effort reflects a major extension of a multi-agency initiative to provide Federal guidance on determining whether a radioactively-contaminated site (including materials and equipment located on or used at the site) has been adequately cleaned up.

To support development of this update, EPA's Office of Radiation and Indoor Air (ORIA), on behalf of the Federal Inter-Agency MARSSIM Workgroup, has requested an SAB consultation to seek advice early in the process for technical and scientific improvements to MARSSIM leading to the issuance of Revision 2. In response to ORIA's request, the SAB Radiation Advisory Committee (RAC) will be augmented with additional experts to conduct this consultation.

Request for Nominations: The SAB Staff Office is seeking nominations of nationally and internationally recognized scientists and engineers with demonstrated expertise and experience in one or more of the following areas: Environmental monitoring and sampling, geology, hydrogeology, measurement protocols for radionuclides, metrology, radiation science and statistics.

Additional Information: For questions concerning "MARSSIM, Rev. 1(2001)," please contact Dr. Mary E. Clark of the U.S. EPA, ORIA by telephone at (202) 343–9348, fax at (202) 343–2395, or e-mail at *clark.marye@epa.gov.*

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals in the areas of expertise described above for possible service on this expert Panel. Nominations should be submitted in electronic format (which is preferred over hard copy) following the instructions for "Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed" provided on the SAB Web site. The instructions can be accessed through the "Nomination of Experts" link on the blue navigational bar on the SAB Web site at *http://www.epa.gov/sab.* To receive full consideration, nominations should include all of the information requested below.

EPA's SAB Staff Office requests contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Dr. K. Jack Kooyoomjian, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than November 12, 2010. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and bio-sketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff, will be posted in a List of Candidates on the SAB Web site at *http://www.epa.gov/sab.* Public comments on this List of Candidates will be accepted for 21 calendar days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office, a review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In forming this expert panel, the SAB Staff Office will consider public comments on the List of Candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for Panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; and (e) skills working in committees, subcommittees and advisory panels; and, (f) for the Panel as a whole, diversity of expertise and viewpoints.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address *http://*

www.epa.gov/sab/pdf/epaform3110–48.pdf.

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB Web site at *http://www.epa.gov/sab/pdf/ec02010.pdf.*

Dated: October 15, 2010.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–26656 Filed 10–20–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 1, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 20, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Judith B. Herman, OMD, 202–418–0214 or e-mail *Judith-b.herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0698.

Title: Sections 25.203(i) and 73.1030(a)(2), Radio Astronomy Coordination Zone in Puerto Rico.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents and Responses: 200 respondents; 1,000 responses.

Estimated Time per Response: 5–40 minutes (.0833 hours to .667 hours).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 154(i), 303(c), 303(f), 303(g), 303(r), and 309(j)(13).

Total Annual Burden: 142 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this revised collection to the Office of Management and Budget (OMB) after this comment period to obtain the full three year approval from them. The Commission is revising this information collection because Part 23 rules, specifically section 23.20, was eliminated because there are no International Fixed Public Radiocommunication Services (IFPRS) licenses in operation. On January 14, 2010, a *Report and Order,* IB Docket No. 05–216, FCC 10–7, was adopted that eliminated Part 23 rules and the frequency allocations for IFPRS in the Table of Frequency Allocation. Part 23 was created in the 1930s. IFPRS more recently was made up of point-to-point microwave services. For many years, these facilities provided an important form of international communications. More recently, however IFPRS has been limited to point-to-point microwave services provided between islands in the Caribbean Sea. Therefore, the Commission has removed this rule section from this information collection.

The Commission published a 60-day delegated notice on September 22, 2010 (75 FR 57792) which incorrectly stated that we would submit this collection as an extension (no change in the Commission's reporting and/or third party disclosure requirements). However, after publication of this notice in the **Federal Register**, FCC 10–7 was discovered that changed this information collection. So, the Commission decided to publish another notice with accurate information on how we are treating and submitting this OMB submission.

The existing requirements for this information collection are contained in parts 25 and 73. In a 1997 Report and Order, the Commission established a Coordination Zone for new and modified radio facilities in various communications services that cover the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra within the Commonwealth of Puerto Rico. The coordination zone and notification procedures enable the Arecibo Radio Astronomy Observatory to receive information needed to assess whether an applicant's proposed operations will cause harmful interference to the Arecibo Observatory's operations, which also promotes efficient resolution of coordination problems between the applicants and the Observatory. The Observatory will perform interference evaluations at no cost to applicants. If potential interference problems are identified, applicants are required to make reasonable attempts to resolve or mitigate such problems in order to protect the Observatory.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–26542 Filed 10–20–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the

Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date reissued
016727NF	Cargo Express (Saipan), Inc., Chalan Kiya Industrial Center, P.O. Box 7447 SVRB, Saipan, MP 96950.	August 25, 2010.
019428N	Delta Trans Logistics, Inc., 15522 Broadway Center Street, Gardena, CA 90248	August 20, 2010.
020883NF	Masters Shipping Inc., 12520 Lombard Lane, Alsip, IL 60803	August 22, 2010.
020634NF	Sofilink Continental, Inc., 6313 NW 99th Avenue, Miami, FL 33178	September 23, 2010
021503F	Global Cargo Group, Inc., dba GCI Logistics, 9300 NW 25th Street, Suite 104, Miami, FL 33172.	August 30, 2010.
021953F	Express Shipping Company of Illinois, 670 E. Northwest Hwy, 2nd FL., Arlington Heights, IL 60004.	September 2, 2010.
022260N	EJ Logistic Inc., 2500 NW 79th Avenue, Suite 200, Miami, FL 33122	August 26, 2010.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2010–26431 Filed 10–20–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 002213NF.
Name: Staudt International Services Corp.
Address: 1000 E. 14th Street, Los Angeles, CA 90021.
Date Revoked: September 16, 2010.
Reason: Failed to maintain valid bonds.

License Number: 4126F.
Name: M.K.C. Customs Brokers International Inc.
Address: 9320 S. La Cienega Blvd., Inglewood, CA 90301.
Date Revoked: September 13, 2010.
Reason: Failed to maintain a valid bond.

License Number: 15656N.
Name: Raya Navigation, Inc.
Address: 6701 Moravia Park Drive, Unit B, Baltimore, MD 21237.
Date Revoked: September 17, 2010.
Reason: Failed to maintain a valid bond.

License Number: 18309N.
Name: Gunter Shipping, Inc.
Address: 700 Nostrand Avenue, Brooklyn, NY 11216.
Date Revoked: September 17, 2010.
Reason: Failed to maintain a valid bond.

License Number: 018717N.
Name: IFE Global Logistics Inc.
Address: 100 North Hill Drive, #16, Brisbane, CA 94005.
Date Revoked: September 18, 2010.
Reason: Failed to maintain a valid bond.

License Number: 019679F.
Name: Incline International Relocation, Inc.
Address: 3541 Washington Pike, Bridgeville, PA 15017.
Date Revoked: September 19, 2010.
Reason: Failed to maintain a valid bond.

License Number: 019763N.
Name: Cargo Distribution International, Inc.
Address: 860 Foster Avenue, Bensenville, IL 60106.
Date Revoked: September 30, 2010.
Reason: Failed to maintain a valid bond.

License Number: 020281F.
Name: Freightsolutions LLC dba Freight Solutions.
Address: 1775 NW 70th Avenue, Suite 10, Miami, FL 33126.
Date Revoked: September 5, 2010.
Reason: Failed to maintain a valid bond.

License Number: 020931NF.
Name: Good One Logistics Inc.
Address: 1001 Nicholas Blvd., #A, Elk Grove Village, IL 60007.
Date Revoked: September 10, 2010.
Reason: Failed to maintain valid bonds.

License Number: 021040N.
Name: Green Line Global International Corporation.
Address: 8500 Rex Road, Pico Rivera, CA 90660.
Date Revoked: September 12, 2010.
Reason: Failed to maintain a valid bond.

License Number: 021503NF.
Name: Global Cargo Group, Inc. dba GCI Logistics.
Address: 9300 NW 25th Street, Suite 104, Miami, FL 33172.
Date Revoked: August 30, 2010.
Reason: Failed to maintain valid bonds.

License Number: 021664N.
Name: Seaport Int'l Freight Consolidators, Inc. dba Seaport Int'l Freight Consolidators.
Address: 2003 SW 100th Terrace, Miramar, FL 33025.
Date Revoked: September 4, 2010.
Reason: Failed to maintain a valid bond.

License Number: 021731NF.
Name: RCF International, Inc.
Address: 3625 NW 82nd Avenue, Suite 103, Miami, FL 33166.
Date Revoked: September 17, 2010.
Reason: Failed to maintain valid bonds.

License Number: 021888F.
Name: Harbor Freight Logistics Ltd. L.L.C.
Address: 346 E. Park Manor Drive, Lake Charles, LA 70611.
Date Revoked: September 9, 2010.
Reason: Failed to maintain a valid bond.

License Number: 022143F.
Name: DTI Group Inc.
Address: 10913 NW 30th Street, Suite 107, Miami, FL 33172.
Date Revoked: September 16, 2010.
Reason: Failed to maintain a valid bond.

License Number: 022267N.
Name: Integrated Global Logistics, LLC.
Address: 10921 SW 120th Street, Miami, FL 33176.
Date Revoked: September 27, 2010.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2010–26436 Filed 10–20–10; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Ames Laboratory, Ames, Iowa, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On October 6, 2010, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked in any area of the Department of Energy facility at the Ames Laboratory from January 1, 1955 through December 31, 1960, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective November 5, 2010, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–26557 Filed 10–20–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from Revere Copper and Brass, Detroit, Michigan, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On October 6, 2010, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employer employees who worked at Revere Copper and Brass, Detroit, Michigan, from July 24, 1943 through December 31, 1954, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation will become effective November 5, 2010, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–26665 Filed 10–20–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Blockson Chemical Company in Joliet, Illinois, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On September 3, 2010, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employer employees who worked at the Blockson Chemical Company in Joliet, Illinois from March 1, 1951 to June 30, 1960, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation will become effective October 3, 2010, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–26562 Filed 10–20–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–11–11AA]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Carol E. Walker, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Central America Water and Sanitation Program Sustainability Evaluation and Qualitative Survey—NEW—Global Water Sanitation and Hygiene (GWASH) Team, Environmental Health Services Branch (EHSB), Division of Emergency and Environmental Health Services (DEEHS), National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC, under Section 301 of the Public Health Service Act (42 U.S.C. 241) has the authority to conduct research relating to the sustainability of water, sanitation and hygiene education (WASH) programs. An epidemiological study with statistical methods will be used to evaluate these interventions to determine the key factors to longevity of these projects.

There is little information available on the longevity of infrastructure and hygiene behaviors after WASH interventions are provided. Sustainability of these WASH interventions is a crucial factor in maintaining the health and well-being of a community.

In the Latin American and Caribbean region, 20% of the rural population in 2008 had no access to an improved drinking water source. Forty-five percent of this population also has unimproved sanitation facilities with 20% of that population not using any type of sanitation facility.

Sustainability of WASH interventions ties in to goal 7 of the Millennium Development Goals, to ensure environmental sustainability. Specifically, it is to "reduce by half the proportion of the population without sustainable access to safe drinking water and basic sanitation" by 2015.

In addition to this issue, significant natural disasters such as hurricanes and tropical storms have the potential to completely destroy infrastructure. In 1998, Central America (El Salvador, Guatemala, Honduras, and Nicaragua) was struck by Hurricane Mitch. After the hurricane, the American Red Cross (ARC) responded to the disaster and provided community- and household-level water, sanitation, and hygiene education to hundreds of communities. What began as a disaster response/reconstruction program in 1998, has developed into a study of the long-term sustainability of WASH interventions.

This research will focus on assessing eight communities that were provided WASH interventions by the ARC post-Hurricane Mitch. This survey will help to evaluate the key factors that help communities to maintain their infrastructure. The results will be used to improve ARC programs as well as to help guide other non-governmental agencies on how to best maximize their investments to ensure long-term community health.

This research includes four components which will be done in each community: (1) A community survey with community leaders and/or the local water board; (2) a cross-sectional quantitative and qualitative household survey; (3) water sampling and analysis of community water sources/systems and stored household water; and (4) an infrastructure inspection of the community water system. United States Agency for International Development (USAID) indicators were used as the basis for measuring WASH interventions using performance indicators. Performance indicators are a way to measure the performance of disaster-related water and sanitation programs.

Four indicators will be used in this evaluation. To measure the water intervention we will estimate (1) the percent of households with access to an improved water source. The sanitation indicator measures (2) the percent of households with access to improved sanitation. Hygiene education is evaluated using two indicators, (3) the percent of households with appropriate hand washing behavior and (4) the percent of the population using hygienic sanitation facilities.

The sustainability evaluation will conduct a face-to-face interview with the community leaders and/or members of the water board from eight communities.

Second, a cross-sectional household survey (n = 150) that are randomly selected will be administered. This survey contains questions on water use, access and availability; sanitation access, use and maintenance; and hygiene education—when was the last time it was presented to the community, what topics were discussed, when was it provided and by whom. The household interview will be done using a paper survey, reviewed each day and then transferred into an electronic database for statistical analysis and calculation of the indicators. The survey will be done with the female head of household and take approximately 30 minutes.

Third, a qualitative survey with randomly selected female head of household (n = 30), will be conducted to gather study participants thoughts and opinions on the WASH services provided to them and their community. This survey will be tape recorded and take approximately 30 to 45 minutes to complete.

All household surveys will include qualitative testing of drinking water (n = 180) stored in the home. Total coliforms and E. coli will be determined using a standard pre-measured Hach test kit. Included in the water sampling portion of this study are the community water sources and water samples (n = 20) within the distribution system. Additional testing will include measuring free chlorine in the community water system if chlorine is being used (n = 10).

Lastly, an infrastructure evaluation for each community will be done by CDC personnel using a checklist. This evaluation will help to determine the strengths and weaknesses of each system for each community.

There is no cost to respondents to participate in the sustainability evaluation other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents/form name	Number of respondents	Number of responses per respondent	Average burden response (in hours)	Total burden (in hours)
Quantitative Household interviews	150	1	0.5	75
Qualitative Household interviews	30	1	1	30
Community survey	8	1	1	8
Water Sampling	200	1	0.5	100
Infrastructure survey	8	1	1	8
Total				221

Dated: October 15, 2010.

Catina Conner,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–26566 Filed 10–20–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuroinflammation.

Date: October 26, 2010.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Peter B. Guthrie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Immunity and Host Defense, and Inflammation.

Date: October 27, 2010.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David B. Winter, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1152, *dwinter@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 15, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–26497 Filed 10–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Psychopathology, Developmental Disabilities, Stress and Aging.

Date: November 12, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Maribeth Champoux, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7759, Bethesda, MD 20892, 301–594–3163, *champoum@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; HIV/AIDS Vaccines Study Section.

Date: November 12, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Mark Hopkins Hotel, 999 California Street, San Francisco, CA 94108.

Contact Person: Mary Clare Walker, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cognition, Language and Perception.

Date: November 12, 2010.

Time: 11 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington, DC Hotel, 999 Ninth Street, NW., Washington, DC 20001.

Contact Person: Weijia Ni, PhD, Scientific Review Officer, Center for Scientific Review,

National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR10–074: Program Project: Solid-State NMR Technologies for Membrane Protein Structure.

Date: November 16, 2010.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting)

Contact Person: Mike Radtke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, *radtkem@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 15, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–26499 Filed 10–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Mechanisms and Prevention of Sexual Transmission of HIV/SIV.

Date: November 17–18, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Raymond R. Schleef, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–3679, *schleefrr@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 15, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–26498 Filed 10–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–485 and Supplements A and E, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–485 and Supplements A and E, Application to Register Permanent Residence or Adjust Status; OMB Control No. 1615–0023.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 30, 2010, at 75 FR 37820, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 22, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue, Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0023 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application to Register Permanent Residence or Adjust Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–485, and Supplements A and E; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* The information collected is used to determine eligibility to adjust status under section 245 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–485—491,112 responses at 6 hours and 15 minutes (6.25) per response; Supplement A—3,888 responses at 13 minutes (.216) per response; Supplement E—31,000 responses at one hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,101,289 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: October 18, 2010.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–26510 Filed 10–20–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–698, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: Form I–698, Application to Adjust Status from Temporary to Permanent Resident; OMB Control No. 1615–0035.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 23, 2010, at 75 FR 35825, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 22, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue, Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0035 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application to Adjust Status from Temporary to Permanent Resident.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–698; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* The data collected on this form is used by USCIS to determine eligibility to adjust an applicant's residence status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 704 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 704 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: October 18, 2010.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–26512 Filed 10–20–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control No. 1615–0038]

Agency Information Collection Activities: Form I–751, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–751, Petition to Remove Conditions on Residence; OMB Control No. 1615–0038.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 30, 2010, at 75 FR 37821, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 22, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue, Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–

272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0038 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Petition to Remove Conditions on Residence.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–751; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* This form is used by USCIS to verify the petitioner's status and determine whether the conditional resident is eligible to have his or her status removed.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 183,000 responses at 3 hours and 20 minutes (3.333) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 609,939 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: October 18, 2010.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–26511 Filed 10–20–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Certain Heating Boilers

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued a final determination concerning the country of origin of certain heating boilers. Based upon the facts presented, CBP has concluded in the final determination that Canada is the country of origin of the heating boilers for purposes of U.S. Government procurement.

DATES: The final determination was issued on October 13, 2010. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination on or before November 22, 2010.

FOR FURTHER INFORMATION CONTACT: Barbara Kunzinger, Valuation and Special Programs Branch: (202) 325–0359.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on October 13, 2010, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of heating boilers which may be offered to the U.S. Government under an undesignated procurement contract. This final determination, in HQ H119218, was issued at the request of Camus Hydronics Ltd. under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that, based upon the facts presented, the heating boilers, assembled in Canada from parts made in the United States, Canada, and France, are substantially transformed in Canada, such that Canada is the country of origin of the finished article for purposes of U.S. Government procurement.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, Customs Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register.**

Dated: October 13, 2010.

Sandra L. Bell,

Executive Director, Regulations and Rulings, Office of International Trade.

Attachment

HQ H119218
October 13, 2010
OT:RR:CTF:VS H119218
Ms. Regina Vargo
Greenberg Traurig, LLP
2101 L Street NW, Suite 1000
Washington, D.C. 20037
Re: U.S. Government Procurement; Heating Boilers
Dear Ms. Vargo:

This is in response to your letter, dated August 3, 2010, requesting a final determination on behalf of Camus Hydronics Ltd. (Camus) of Ontario, Canada, pursuant to subpart B of 19 C.F.R. part 177.

Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 et seq.), U.S. Customs and Border Protection (CBP) issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of certain heating boilers. We note that Camus is a party-at-interest within the meaning of 19 C.F.R. 177.22(d)(1) and is entitled to request this final determination as the manufacturer of these boilers under 19 C.F.R. 177.23(a).

FACTS:

This case involves the Camus *DynaFlame, DynaForce, and DynaMax* heating boilers fabricated and assembled in Canada from sheet metal and components primarily of United States (U.S.), Canadian, and (in the case of the *DynaMax*) French origin. All three boilers go through both a sub-assembly stage and an assembly stage in Canada, as well as testing, quality control, and packaging. A bill of materials was submitted with your request.

DynaFlame Boilers

The *DynaFlame* boiler is composed of 65 separate components. Of these, 22 are fabricated in Canada from sheet metal imported from the U.S. Most of the finished components, including the burner, headers, and controls, are also of U.S. origin. The fabrication process includes, among other things, shearing the flat stock to the required size; utilizing punch presses, tools, and dies; bending and welding the steel; and painting the steel components.

Four sub-assembly processes then occur in Canada; these include the assembly of the heat exchanger, the gas train, electronics and controls, and the combustion fan. Assembly of the heat exchanger requires, among other things, cutting copper finned tube to specific lengths, adjusting the tube to the required specifications, inserting the tubes into the headers, inserting and attaching a number of other components, and hydro testing the heat exchanger. The copper tubes used to make the heat exchanger are of U.S. origin. The gas train assembly requires fitting the components together by threading the components with nipples and fittings, and then painting all the pipe black. Assembly of the electronics and controls requires installing and wiring the components together, and programming certain aspects of the control box. The combustion fan is assembled by separating the fan housing, installing the components, and then reassembling the housing.

The four sub-assemblies, along with the fabricated sheet metal parts and various other components, are then assembled into a finished *DynaFlame* boiler. Final assembly consists of, among other things, installing, wiring, and fastening the sub-assemblies to each other and the remaining components.

DynaForce Boilers

The *DynaForce* boiler contains almost 60 separate components. Of these, 18 are fabricated in Canada from sheet metal imported from the U.S. The sheet metal fabrication process for the *DynaForce* is the same as that for the *DynaFlame*. The heat exchanger is purchased already assembled from a Canadian supplier, and is assembled in Canada from U.S. origin stainless steel plates and tubes. The burner, controls, and fan kit are some of the U.S. origin components.

Like with the *DynaFlame,* the *DynaForce* goes through both a sub-assembly stage and an assembly stage. The sub-assembly stage has three processes: the gas train, electronics and controls, and the combustion fan. The assemblies of the gas train, electronics and controls, and the combustion fan for the *DynaForce* are very similar to those for the *DynaFlame.*

The three sub-assemblies, the heat exchanger, the fabricated components of sheet metal, and the remaining parts are then assembled to create the finished *DynaForce* boiler.

DynaMax Boilers

The *DynaMax* boiler contains over 50 separate components. Of those, 21 are fabricated in Canada from U.S. originating sheet metal. The fabrication process for the sheet metal is the same for the *DynaMax* as it is for the *DynaFlame* and *DynaForce*. The heat exchanger (along with the burner) is imported into Canada from France. The controls, sensors, fan, and pump are some of the components of U.S. origin.

As with the other two boilers, the *DynaMax* has both a sub-assembly stage and an assembly stage. The sub-assembly stage is composed of three sub-assembly processes: the heat exchanger, electronics and controls, and the plate exchanger. Although the heat exchanger is imported from France, it undergoes additional assembly in Canada. The heat exchanger sub-assembly consists of, among other things, inspection, attaching the pump, installing the burner and ignition, and testing the heat exchanger. Assembly of the plate exchanger requires selecting the required plate exchanger, attaching the fittings and labeling the fittings.

These three sub-assemblies are then assembled together with the fabricated components of sheet metal, the combustion fan, the gas train, and various other parts to become the finished *DynaMax* boiler.

ISSUE:

What is the country of origin of the subject boilers for the purpose of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to subpart B of part 177, 19 C.F.R. § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens* v. *United States,* 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd,* 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See* C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. Whether an operation is complex and meaningful depends on the nature of the operation, including the number of components assembled, number of different operations, time, skill level required, attention to detail, quality control, the value added to the article, and the overall employment generated by the manufacturing process.

The courts and CBP have also considered the essential character of the imported article in making these determinations. *See Uniroyal, Inc.* v. *United States,* 542 F. Supp. 1026, 3 CIT 220, 224–225 (1982) (where it was determined that imported uppers were the essence of a completed shoe) and *National Juice Products Association, et al v. United States,* 628 F. Supp. 978, 10 CIT 48, 61 (1986) (where the court addressed each of the factors (name, character, and use) in finding that no substantial transformation occurred in the production of retail juice products from manufacturing concentrate).

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

In Headquarters Ruling Letter ("HRL") 555532 (September 18, 1990), Customs held that electric and gas water heaters imported from Mexico were a product of Mexico. The Mexican manufacturer fabricated the shell with rolled steel from the U.S. and then assembled the fabricated shell with other components of the water heater, many of which were of U.S. origin. This is very similar to the process used by Camus in this case. Camus uses U.S. originating sheet metal to fabricate many parts, such as the boiler shell, and then assembles U.S., Canadian, and (in the case of the DynaMax) French originating components to create the completed boilers.

In HRL 561450 (April 14, 2000), a home espresso machine assembled in Italy from over 60 components from both Spain and Italy was considered to be a product of Italian origin. The assembly of the components was found to be a substantial transformation resulting in a new commercial product with a new name, character and use. Similarly, the assembly of the U.S., Canadian, and French components for the boilers involves at least 50 components. The assembly results in an article with a new name, character and use from that of the individual components—a boiler.

All three boilers undergo a substantial amount of work in Canada, from the fabrication of the sheet metal into components, the assembly of parts into subassemblies, and the final assembly—combining the subassemblies and the

remaining components into the finished boilers. The number of components, the least of which being 50, is a meaningful assembly of individual components into the finished boilers. Although some of the more expensive parts are not of Canadian origin, no one part could function or run the boiler without the others.

Therefore, based on the totality of the circumstances in this case, we find that the Canadian processing results in a substantial transformation of the components and that the *DynaFlame, DynaForce,* and *DynaMax* boilers should be considered products of Canada for the purpose of U.S. Government procurement.

HOLDING:

Based on the facts of this case, the country of origin of the Camus *DynaFlame, DynaForce,* and *DynaMax* heating boilers is Canada for purposes of U.S. Government procurement.

Notice of this final determination will be given in the Federal Register, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31 that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,
Sandra L. Bell
Executive Director
Office of Regulations and Rulings
Office of International Trade

[FR Doc. 2010–26649 Filed 10–20–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2010–0925]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) will meet to discuss items related to safety of operations and other matters affecting the oil and gas offshore industry. The purpose of this meeting is to review and discuss reports and recommendations received from the various NOSAC subcommittees. The Committee will then use this information to formulate recommendations to the agency. This meeting will be open to the public.

DATES: The meeting will take place on Tuesday, November 9, 2010, from 9 a.m. to 4:30 p.m. CST. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before October 25, 2010. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before October 25, 2010.

ADDRESSES: The Committee will meet at the Crowne Plaza Houston Northpoint, Grand Ballroom 1&2, 425 Sam Houston Parkway East, Houston, TX 77060, Tel. (281) 445–9000, on November 9, 2010. Public participation is welcome and members of the public wishing to participate may contact Commander P.W. Clark at 202–372–1410. Written comments should be sent to Commander P.W. Clark, Designated Federal Officer of NOSAC, Commandant (CG–5222), U.S. Coast Guard, 2100 Second Street, SW, Stop 7126, Washington, DC 20593–0001; or by fax to 202–372 1926, at least 15 days prior to the meeting. This notice is available in our online docket, USCG–2010–0925, at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Commander P.W. Clark, Designated Federal Officer (DFO) of NOSAC, or Mr. Kevin Pekarek, Assistant Designated Federal Officer (ADFO), telephone 202–372–1386, fax 202–372–1926.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (Pub. L. 92–463). NOSAC provides advice and makes recommendations to the Coast Guard on safety and other concerns affecting the offshore oil and gas industry and assists the Coast Guard in formulating U.S. positions for discussion and presentation at the International Maritime Organization (IMO).

Agenda of Meeting

The agenda for the November 9, 2010, Committee meeting is as follows:

(1) Roll call of committee members.

(2) Approval of minutes from the September 29, 2010, meeting.

(3) Presentation and discussion of reports, recommendations from the subcommittees on:

(a) Medical Evacuation of Injured Divers.

(b) Marine Portable Quarters.

(4) An update on the NOSAC recommendations received by the Coast Guard and their status.

(5) The Bureau of Ocean Energy, Management, Regulation and Enforcement (BOEMRE) organizational and regulatory update.

(6) A presentation on the DEEPWATER HORIZON ongoing Investigation.

(7) An update on current Coast Guard regulatory initiatives.

(8) An update on Standards, Training, Certification & Watch keeping (STCW) involving U.S. vessels operating in foreign waters and the use of non-U.S. citizens for their manning purposes.

(9) International Maritime Organization (IMO) Updates concerning what regulations have been released or will be released soon that may be of interest to NOSAC.

(10) Period for public comment.

Procedural

The DFO will use the following procedures to facilitate the meeting.

(1) The meeting is open to the public.

(2) Persons desiring to present statements at the meeting are encouraged to notify the DFO listed in the **FOR FURTHER INFORMATION CONTACT** section above before October 25, 2010.

(3) The DFO will make every effort to accommodate all persons who wish to participate, but admission will be subject to availability of space in the meeting room. The meeting may adjourn early if scheduled speakers complete their statements or questions in less time than is scheduled for the meeting.

(4) An individual, whether speaking in a personal or a representative capacity on behalf of an organization, will be limited to a three-minute statement and scheduled on a first-come, first-served basis. If a large number of persons register to present comments, this amount of time may be shortened to provide all registered persons an opportunity to present their comments.

(4) Any speaker prevented by time constraints from speaking will be encouraged to submit written remarks, which will be made part of the record.

(5) For information on facilities or services for individuals with disabilities or to request assistance at the meeting, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above before October 25, 2010.

(6) The meeting will be recorded by a court reporter. A transcript of the meeting and any material presented at the meeting will be made available through the fido.gov Web site discussed in the MINUTES section below.

(7) The meeting is designed to invite public views and gather information on relevant topics being discussed. However, the DFO, ADFO, and Committee members may ask questions to clarify a statement.

Minutes

Minutes from the meeting will be available for the public review and copying 30 days following the meeting and can be accessed from the fido.gov

Web site. Use "code 68" to identify NOSAC when accessing this material.

Dated: October 14, 2010.

F.J. Sturm,

Acting Director, Commercial Regulations and Standards.

[FR Doc. 2010–26545 Filed 10–20–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2007–0008]

National Advisory Council Teleconference Meeting

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of teleconference meeting.

SUMMARY: The National Advisory Council (NAC) will be holding a teleconference meeting for the purpose of discussing revisions to the National Exercise Program (NEP). The teleconference meeting will be open to the public.

DATES: *Meeting Date:* Wednesday, November 10, 2010 from approximately 3 p.m. e.s.t. to 5 p.m. e.s.t.

Comment Date: Written comments must be received by Wednesday, November 3, 2010.

ADDRESSES: The meeting will be held via teleconference only. Members of the public who wish to obtain the listen-only call-in number, access code, and other information for the public teleconference may contact Alyson Price as listed in the **FOR FURTHER INFORMATION CONTACT** section by Wednesday, November 3, 2010. All written comments must be received by Wednesday, November 3, 2010. All submissions received must include the Docket ID FEMA–2007–0008 and may be submitted by any one of the following methods:

Federal Rulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments on the Web site.

E-mail: FEMA–RULES@dhs.gov. Include Docket ID FEMA–2007–0008 in the subject line of the message.

Facsimile: (703) 483–2999.

Mail: FEMA, Office of Chief Counsel, 500 C Street, SW., Room 840, Washington, DC 20472–3100.

Hand Delivery/Courier: FEMA, Office of Chief Counsel, 500 C Street, SW., Room 840, Washington, DC 20472–3100.

Instructions: All submissions received must include the docket ID: FEMA–2007–0008. Comments received will also be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may want to read the Privacy Act Notice, which is found via the Privacy Notice link in the footer of *http://www.regulations.gov.*

Docket: For access to the docket to read documents or comments received by the National Advisory Council, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Alyson Price, Designated Federal Officer, FEMA, 500 C Street, SW., Room 832, Washington, DC 20472–3100, telephone 202–646–3746, fax 202–646–3930, and e-mail *FEMA–NAC@dhs.gov.* The NAC Web site is located at: *http://www.fema.gov/about/nac/.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is required under the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*).

The Department of Homeland Security/Federal Emergency Management Agency (DHS/FEMA) is working to revise the NEP to incorporate key tenets, principles, and structures based on the Secretary's August 17, 2010 directive. FEMA will be conducting a public teleconference with the NAC to brief it on the planned program revisions and to obtain the Council's input on the NEP reform.

The meeting is open to the public. Although members of the public will not be allowed to comment orally during the meeting, they may file a written statement with the NAC before the date of the meeting. For those wishing to submit written comments, please follow the procedure described in the **ADDRESSES** section.

Dated: October 15, 2010.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–26593 Filed 10–20–10; 8:45 am]

BILLING CODE 9111–48–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–2010–N191; 70133–1265–0000–S3]

Draft Comprehensive Conservation Plan and Environmental Assessment, Selawik National Wildlife Refuge, Kotzebue, AK

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan (CCP) and environmental assessment (EA) for the Selawik National Wildlife Refuge (Refuge) for public review and comment. In this document, we describe alternatives, including our preferred alternative, to manage the Refuge for the 15 years following approval of the final CCP.

DATES: To ensure consideration, please send your written comments by January 15, 2011. We will announce upcoming public meetings and other opportunities for public input in local news media.

ADDRESSES: You may submit comments or requests for copies of the draft CCP and the EA or more information by any of the following methods. You may request hard copies or a CD–ROM of the document.

Agency Web Site: Download a copy of the document at *http://alaska.fws.gov/nwr/planning/plans.htm.*

E-mail: selawik_planning@fws.gov; please include "Selawik National Wildlife Refuge draft CCP and EA" in the subject line of the message.

Fax: Attn: Jeffrey Brooks, (907) 786–3965, or Lee Anne Ayres, (907) 442–3124.

U.S. Mail: Jeffrey Brooks, U.S. Fish and Wildlife Service Regional Office, 1011 E. Tudor Road Mailstop 231, Anchorage, AK 99503.

In-Person Viewing or Pickup: Call (907) 786–3357 to make an appointment during regular business hours at the above address; or call (907) 442–3799 to make an appointment during regular business hours at the Selawik Refuge Headquarters in Kotzebue, AK.

FOR FURTHER INFORMATION CONTACT: Jeffrey Brooks, Planning Team Leader, at the above address, by phone at (907) 786–3839, or by e-mail at *selawik_planning@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for the Selawik National Wildlife Refuge. We started this process through a notice of intent in the **Federal Register** (73 FR 57143; October 1, 2008).

The Selawik National Wildlife Refuge was established by the Alaska National Interest Lands Conservation Act (ANILCA) in 1980. Selawik Refuge straddles the Arctic Circle in northwestern Alaska, encompassing an area approximately the size of Connecticut. Refuge boundaries

encompass approximately 3.2 million acres of which approximately 2.5 million acres are administered by the U.S. Fish and Wildlife Service. Section 302(7)(B) of ANILCA states the purposes for which the Selawik Refuge was established: (1) To conserve fish and wildlife populations and habitats in their natural diversity; (2) to fulfill international treaty obligations of the United States with respect to fish and wildlife and their habitats; (3) to provide the opportunity for continued subsistence use by local residents; and (4) to ensure water quality and necessary water quantity within the Refuge.

The Selawik River, an important feature, meanders through the heart of the Refuge, creating a rich succession of habitats, including vast wetlands. The names of both the river and the Refuge originated from the Inupiaq word "siilivik," which means "place of sheefish." The sheefish, or inconnu, is a member of the whitefish family and provides an important, and highly desired, food resource for Native subsistence harvesters in this region of Alaska.

Extensive tundra wetlands containing grass and sedge meadows dominate the Refuge landscape, while boreal spruce forests, alder, and willow thickets trace stream and river drainages. Multitudes of migratory waterfowl and shorebirds breed on 24,000 lakes and ponds within the Refuge. Neo-tropical songbirds nest in forests and willow thickets. Moose, wolves, lynx, bears, muskoxen, Arctic and red fox, beavers, and muskrats are year-round residents. The Western Arctic Caribou Herd migrates across Selawik Refuge. In mild winters, small bands of caribou remain on the Refuge to forage in the lichen-covered foothills. Many rivers, sloughs, and lakes support both freshwater and anadromous fisheries, and provide spawning grounds for northern pike, Arctic grayling, and various types of whitefish.

Access to the Refuge is possible only by boat, float- or ski-equipped airplane, snowmobile, or dogsled team. Snowmobile trails provide vital links among the Alaska Native villages of the region in winter and are usually passable to travelers through the end of April. Several of these villages are located within or near the Refuge boundary, including Buckland, Noorvik, Selawik, Kiana, Ambler, Kobuk, and Shungnak.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, and the Alaska National Interest Lands Conservation Act of 1980 (94 Stat. 2371; ANILCA) require us to develop a CCP for each refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. We will review and update the CCP at least every 15 years in accordance with the Administration Act and ANILCA.

Public Outreach

We started the CCP for Selawik Refuge in September 2008. At that time and throughout the planning process, we requested public comments and considered and incorporated them in numerous ways. We mailed a planning newsletter to approximately 3,200 individuals, agencies, and organizations. This newsletter announced that we were revising the CCP and seeking input from the public. The newsletter informed the public about issues that were identified by the planning team and Refuge staff. The newsletter contained a work sheet that provided an opportunity for people to identify issues that they thought should be addressed in the CCP. This newsletter and work sheet were also made available through the Internet. Over 70 written comments were received.

To gather additional input from the public, members of the planning team held an open house meeting in Kotzebue, which was attended by 18 community members. Visits were made to Buckland, Kiana, Noorvik, Selawik, and Shungnak where members of the planning team attended city and tribal council meetings to inform residents of the planning process and to hear them speak about the issues. Nearly 50 village elders and community leaders were interviewed during these visits.

The planning team categorized the comments into four interrelated topics that were of value to the public: (1) Subsistence; (2) aesthetics, natural habitat, and wildness; (3) fish and wildlife; and (4) research and education. Based on this public outreach and the discussions of the planning team, we have formulated eight major planning issues which are addressed in the draft CCP and the EA: (1) Protection of fish, wildlife, habitats, and subsistence; (2) management of access to refuge lands for community residents and the visiting public; (3) maintaining hunting opportunities; (4) addressing local public use needs; (5) maintaining water quality and quantity; (6) maintaining the wild character of the Refuge and quality visitor experiences; (7) proactively addressing the uncertainties of climate change; and (8) providing more outreach and better communication for the public.

We have considered and evaluated all of these issues and public concerns, with many incorporated into the various management alternatives, goals, and objectives addressed or described in the draft CCP and the EA.

CCP Alternatives We Are Considering

The document describes and evaluates three alternatives for managing the Refuge for the 15 years following approval of the final CCP. These alternatives follow much of the same general management direction. Alternative A (the No-Action Alternative) is required under NEPA and describes continuation of current management activities. Alternative A serves as a baseline against which to compare the other alternatives. Under Alternative A, management of the Refuge would continue to follow direction described in the 1987 CCP and record of decision as modified by subsequent program-specific plans (e.g., fisheries, cultural resources, and fire management plans). Alternative A would continue to protect and maintain the existing wildlife values, natural diversity, and ecological integrity of the Refuge. Human disturbances to fish and wildlife habitats and populations would be minimal. Private and commercial uses of the Refuge would not change, and public uses employing existing access methods would continue to be allowed. Opportunities would be maintained to pursue traditional subsistence activities and recreational hunting, fishing, and other wildlife dependent activities. Opportunities would be maintained to pursue research activities.

Alternative B (the Preferred Alternative) would generally continue to follow management direction described in the 1987 CCP and record of decision as modified by subsequent program-specific plans, but some of that management direction has been updated by changes in policy since the 1987 Selawik CCP was approved. Alternative B identifies these specific changes in management direction as well as new goals and objectives for Refuge management that would be adopted regardless of which alternative is selected. Alternative B proposes limiting access to some public lands,

which are intermingled with private lands, for commercial guides and transporters whose clients are big game hunting. Alternative B proposes that a formal partnership be created between the Refuge and local entities to jointly maintain a shared facility of one or more buildings with capacity for office, meeting, and storage space in a community within the refuge. Alternative B proposes a study of traditional access methods for subsistence purposes. Alternative B proposes that local public use and access needs be addressed by creating formal partnerships between the Refuge and various local entities.

Alternative C would generally continue to follow management direction described in Alternative A as modified by subsequent program-specific plans. Alternative C would also identify any specific changes or updates in management direction as well as adopt the new goals and objectives for Refuge management. Alternative C proposes that the Refuge manager could open or close some public lands, which are intermingled with private lands, to use by commercial guides and transporters whose clients are big game hunting. Alternative C proposes that the Refuge independently maintain a facility of one or more buildings with capacity for office, meeting, and storage space in a community within the refuge. Alternative C proposes the same study of traditional access methods for subsistence purposes. Alternative C would address local public use and access needs slightly different from Alternative B by proposing to expand or improve some opportunities for public use and access on Refuge lands.

Public Meetings

We will involve the public through open houses, meetings, written comments, and personal interviews with community members. We will mail documents to our national and local Refuge mailing lists. Public meetings will be held in communities in the Refuge area, including Kotzebue, Noorvik, and Selawik. Dates, times, and locations of each meeting or open house will be announced in advance in local media.

Submitting Comments/Issues for Comment

We particularly seek comments on the following issues:

- Management of use by commercial guides and transporters to maintain big game hunting opportunities while reducing social conflict in the region;
- How to best conduct a traditional access study of use for subsistence purposes on Refuge lands;
- Proactively addressing climate change; and
- Providing more outreach and better communication for the public.

We consider comments substantive if they:

- Question, with reasonable basis, the accuracy of the information in the document;
- Question, with reasonable basis, the adequacy of the environmental assessment;
- Present reasonable alternatives other than those presented in the draft CCP and the EA; and/or
- Provide new or additional information relevant to the assessment.

Next Steps

After this comment period ends, we will analyze the comments and address them in the form of a final CCP and decision document.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 12, 2010.

Gary Edwards,

Acting Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. 2010–26655 Filed 10–20–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L14200000–BJ0000–LXSITRST0000]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; North Carolina.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM–Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: The survey was requested by the Bureau of Indian Affairs.

The lands surveyed are:

Swain County, North Carolina

The plat of survey represents the dependent resurvey of a portion of the Qualla Indian Boundary, land held in trust for the Eastern Band of Cherokee Indians, in Swain County, in the State of North Carolina, and was accepted September 7, 2010.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against the survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: October 12, 2010.

John Sroufe,

Acting Chief Cadastral Surveyor.

[FR Doc. 2010–26590 Filed 10–20–10; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate Cultural Items: U.S. Department of Defense, Army Corps of Engineers, Portland District, Portland, OR and University of Oregon Museum of Natural and Cultural History, Eugene, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items, for which the University of Oregon Museum of Natural and Cultural History, Eugene, OR, and U.S. Department of Defense, Army Corps of Engineers, Portland District, Portland, OR, have joint responsibility, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25

U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

Native American cultural items described in this notice were excavated under Antiquities Act permits by the University of Oregon, Eugene, OR, on Army Corps of Engineers project land. Following excavations at the site described below, and under the provisions of the permits, the University of Oregon retained the collections for preservation.

Between 1959 and 1968, cultural items were removed from site 35–GM–9, also known as the Wildcat Canyon site, Gilliam County, OR, during excavations by the University of Oregon prior to construction of the John Day Dam. The cultural items were accessioned by the University of Oregon Museum following each successive field season. The 1,420 objects recovered from Area 3 of site 35–GM–9, a cemetery primarily used from approximately 2,500–2,000 B.P., are categorized as unassociated funerary objects because specific associations with individual burials cannot be determined due to unclear spatial distributions of the artifacts in relation to particular sets of human remains. The 1,420 unassociated funerary objects are 32 projectile points, 25 projectile point fragments, 30 blades, 52 blade fragments, 1 multipurpose tool, 3 stone mauls, 1 obsidian chopper, 17 pestles, 14 pestle fragments, 1 hammerstone, 10 worked/flaked cobbles, 5 river pebbles, 1 flaked pebble, 1 rectangular flat stone, 1 flake knife, 12 gravers, 7 burins, 1 spokeshave, 1 core, 12 scrapers, 2 end scraper fragments, 12 bifacially-modified flakes, 55 unifacially-modified flakes, 7 curved flakes, 1 lamellar flake, 2 worked chert flakes, 935 unmodified flakes, 3 stone drills, 6 drill fragments, 5 stone clinkers, 1 possible metate, 1 galena atlatl weight, 1 bolas stone, 1 polishing stone, 2 worked shale or slate fragments, 5 abraders, 1 shaft smoother, 2 shaft smoother fragments, 1 antler awl fragment, 3 bone awl fragments, 1 bone shaft wrench, 1 bone tube, 17 worked antlers, 10 burned antlers, 1 deer jaw, 19 worked bones, 1 cut bone, 1 burned bone fragment, 1 notched bone, 2 decorated bones, 3 bone strips, 52 miscellaneous non-human bones and bone fragments, 2 stone pendant fragments, 1 shell pendant, 1 pebble pendant, 2 dentalia, 1 unspecified bead, 14 bone beads, 1 antler bead, 2 nose plugs, 1 worked pumice piece, 8 red ochre pieces, 1 shell, 1 grooved slate tool and 3 shell flecks.

Site 35–GM–9 is located along the south side shoreline of the Columbia River, approximately 9.5 river miles east of the John Day River confluence. The multicomponent site contains multiple activity areas that are believed to have been repeatedly occupied from approximately 9,000 B.P. to A.D. 1750. Site 35–GM–9 frequently served as a village, camping area and cemetery. Area 3 is believed to have primarily served as a burial area. The burial pattern observed within Area 3 is consistent with customs of Columbia Plateau Native American groups. Excavation and museum documentation indicate that the objects are consistent with cultural items typically found in context with burials characteristic of the Mid-Columbia River Basin.

Oral traditions and ethnographic reports indicate that site 35–GM–9 lies within the historic territory of Sahaptin-speaking Tenino or Warm Springs peoples whose descendants are culturally affiliated with the present-day Confederated Tribes of the Warm Springs Reservation of Oregon. The Confederated Tribes of the Warm Springs Reservation are composed of three Wasco bands, four Warm Springs bands, and Northern Paiutes. The Columbia River-based Wasco were the easternmost group of Chinookan-speaking Indians. The Sahaptin-speaking Warm Springs bands lived farther east along the Columbia River and its tributaries. Northern Paiutes, who spoke a Uto-Aztecan language, historically occupied much of southeastern Oregon. The Confederated Tribes of the Warm Springs Reservation of Oregon peoples also traditionally shared the site area with relatives and neighbors whose descendants may be culturally affiliated with the 14 Sahaptin, Salish and Chinookan-speaking tribes and bands of the present-day Confederated Tribes and Bands of the Yakama Nation, Washington. Yakama homelands were traditionally located on the Washington side of the Columbia River between the eastern flanks of the Cascade Range and the lower reaches of the Yakima River drainage.

Officials of the U.S. Army Corps of Engineers, Portland District, and University of Oregon Museum of Natural and Cultural History, have determined that, pursuant to 25 U.S.C. 3001(3)(B), the 1,420 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals. Officials of the U.S. Army Corps of Engineers, Portland District, and University of Oregon Museum of Natural and Cultural History, have also determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Warm Springs Reservation of Oregon and/or Confederated Tribes and Bands of the Yakama Nation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Daniel Mulligan, NAGPRA Coordinator, Environmental Resources Branch, U.S. Army Corps of Engineers, Portland District, P.O. Box 2946, Portland, OR 97208–2946, telephone (503) 808–4768, before November 22, 2010. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Warm Springs Reservation of Oregon and/or Confederated Tribes and Bands of the Yakama Nation, Washington, may proceed after that date if no additional claimants come forward.

The U.S. Army Corps of Engineers, Portland District, is responsible for notifying the Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; and Nez Perce Tribe, Idaho, that this notice has been published.

Dated: October 14, 2010.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–26466 Filed 10–20–10; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of November 13, 2010, Meeting.

SUMMARY: This notice sets forth the date of the November 13, 2010, meeting of the Flight 93 Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on Saturday, November 13, 2010, from 10 a.m. to 1 p.m. (Eastern). The

Commission will meet jointly with the Flight 93 Memorial Task Force.

Location: The meeting will be held at the Somerset County Courthouse, Court Room #1, located at 111 E. Union Street, Somerset, PA 15501.

Agenda

The November 13, 2010, joint Commission and Task Force meeting will consist of:

1. Opening of Meeting and Pledge of Allegiance.
2. Review and Approval of Commission Minutes from August 7, 2010.
3. Reports from the Flight 93 Memorial Task Force and National Park Service.
4. Old Business.
5. New Business.
6. Public Comments.
7. Closing Remarks.

FOR FURTHER INFORMATION CONTACT: Joanne M. Hanley, Superintendent, Flight 93 National Memorial, 109 West Main Street, Somerset, PA 15501. 814.443.4557.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. Address all statements to: Flight 93 Advisory Commission, 109 West Main Street, Somerset, PA 15501. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 28, 2010.

Joanne M. Hanley,

Superintendent, Flight 93 National Memorial.

[FR Doc. 2010–26462 Filed 10–20–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Nomination Solicitation

AGENCY: National Park Service, Interior.

ACTION: Native American Graves Protection and Repatriation Review Committee; Notice of Nomination Solicitation.

The National Park Service is soliciting nominations for two members of the Native American Graves Protection and Repatriation Review Committee. The Secretary of the Interior will appoint the two members from nominations submitted by national museum organizations and scientific organizations.

Nominations must—

1. Be submitted on organization letterhead, and include the nominator's original signature and daytime telephone number. Also, the nominator must be the official authorized by the organization to submit nominations in response to this solicitation, and the nomination must include a statement that the nominator is so authorized.
2. Include the following information about the nominee:

a. The nominee's full legal name, home address, home telephone number, and e-mail address; and

b. The nominee's resume or a brief biography of the nominee, in which the nominee's NAGPRA experience and ability to work effectively as a member of a Federal advisory board are addressed.

DATES: Nominations must be received by December 20, 2010.

ADDRESSES: Address nominations to David Tarler, Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, National NAGPRA Program, National Park Service, 1201 Eye Street, NW., 8th Floor (2253), Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

1. The Review Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), at 25 U.S.C. 3006.
2. The Review Committee is responsible for:

a. Monitoring the NAGPRA inventory and identification process;

b. Reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items;

c. Facilitating the resolution of disputes relating to the return of such items;

d. Compiling an inventory of culturally unidentifiable human remains and developing a process for disposition of such remains;

e. Consulting with Indian Tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the Review Committee affecting such Tribes or organizations;

f. Consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA; and

g. Making recommendations regarding future care of cultural items that are to be repatriated.

3. Seven members make up the Review Committee. All members are appointed by the Secretary of the Interior. The Secretary may not appoint Federal officers or employees to the Review Committee.

a. Three members are appointed from nominations submitted by Indian Tribes, Native Hawaiian organizations, and traditional Native American religious leaders. At least two of these members must be traditional Indian religious leaders.

b. Three members are appointed from nominations submitted by national museum organizations and scientific organizations.

c. One member is appointed from a list of persons developed and consented to by all of the other members.

4. Members serve as Special Governmental Employees, and are required to submit confidential financial disclosure reports and to complete ethics training on an annual basis.

5. Members are appointed for 4-year terms; incumbent members may be reappointed for 2-year terms.

6. The Review Committee's work is completed during public meetings. The Review Committee normally meets face-to-face two times per year, with each meeting lasting two or three days. The Review Committee also may hold one or more public teleconferences of several hours duration.

7. Review Committee members are compensated for their participation in Review Committee meetings.

8. Review Committee members are reimbursed for travel expenses incurred in association with Review Committee meetings.

9. Additional information regarding the Review Committee—its charter, meeting procedures, findings procedures, dispute procedures, and annual reports to the Congress—is available on the National NAGPRA program Web site, at *http://www.nps.gov/nagpra* (click "Review Committee" in the menu located in the right-hand column).

FOR FURTHER INFORMATION CONTACT: David Tarler, Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, National NAGPRA Program, National Park Service, 1201 Eye Street, NW., 8th Floor (2253), Washington, DC 20005; telephone (202) 354–2108; e-mail *david_tarler@nps.gov.*

Dated: October 15, 2010.

David Tarler,

Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee.

[FR Doc. 2010–26464 Filed 10–20–10; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. TA–131–035 and TA 2104–027]

U.S.-Trans-Pacific Partnership Free Trade Agreement Including Malaysia: Advice on the Probable Economic Effect of Providing Duty-Free Treatment for Imports

AGENCY: United States International Trade Commission.

ACTION: Institution of investigations and scheduling of hearing.

SUMMARY: Following receipt on October 5, 2010, of a request from the United States Trade Representative (USTR), the Commission instituted investigation nos. TA–131–035 and TA–2104–027, *U.S.-Trans-Pacific Partnership Free Trade Agreement Including Malaysia: Advice on the Probable Economic Effect of Providing Duty-Free Treatment for Imports.*

DATES:

November 10, 2010: Deadline for filing requests to appear at the public hearing.
November 12, 2010: Deadline for filing pre-hearing briefs and statements.
November 17, 2010: Public hearing.
November 26, 2010: Deadline for filing post-hearing briefs and statements.
November 26, 2010: Deadline for filing all other written submissions.
January 7, 2011: Transmittal of Commission report to the United States Trade Representative.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Heidi Colby-Oizumi, Project Leader (202–205–3391, *heidi.colby@usitc.gov),* or Falan Yinug, Deputy Project Leader (202–205–2160, *falan.yinug@usitc.gov),* for information specific to these investigations. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091, *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819, *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: In response to an earlier request from the USTR, the Commission, on June 2, 2010, delivered a report to the USTR containing its advice and assessment in investigation Nos. TA–131–034 and TA–2104–026, *U.S.-Trans-Pacific Partnership Free Trade Agreement: Advice on Probable Economic Effect of Providing Duty-Free Treatment for Imports,* relating to the effects of a possible free trade agreement with seven countries (Australia, Brunei Darussalam, Chile, New Zealand, Peru, Singapore, and Vietnam).

In his letter of October 5, 2010, the USTR advised the Commission that Malaysia has joined the negotiations, known as the Trans-Pacific Partnership (TPP) negotiations, and requested that the Commission provide certain advice under section 131 of the Trade Act of 1974 (19 U.S.C. 2151) and an assessment under section 2104(b)(2) of the Trade Act of 2002 (19 U.S.C. 3804(b)(2)) with respect to the effects of providing duty-free treatment for imports from all eight countries.

More specifically, the USTR, under authority delegated by the President and pursuant to section 131 of the Trade Act of 1974, requested that the Commission provide a report containing its advice as to the probable economic effect of providing duty-free treatment for imports of products from the eight TPP partner countries (Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam) on (i) industries in the United States producing like or directly competitive products, and (ii) on consumers. The USTR asked that the Commission's analysis consider each article in chapters 1 through 97 of the Harmonized Tariff Schedule of the United States (HTS) for which tariffs will remain, taking into account implementation of U.S. commitments in the World Trade Organization and under U.S. free trade agreements in force between the United States and TPP partner countries. The USTR asked that the advice be based on the HTS in effect during 2010 and trade data for 2008. The USTR also requested that the Commission, in preparing its advice, assume that any known U.S. non-tariff barrier will not be applicable to such imports, and that the Commission note in its report any instance in which the continued application of a U.S. non-tariff barrier would result in different advice with respect to the effect of the removal of the duty.

In addition, the USTR requested that the Commission prepare an assessment, pursuant to section 2104(b)(2) of the Trade Act of 2002, of the probable economic effects of eliminating tariffs on imports from the TPP countries of those agricultural products on the list attached to his letter on (i) industries in the United States producing the product concerned, and (ii) the U.S. economy as a whole.

The USTR asked that the Commission identify in its report, among other things, any changes in its advice from the advice delivered on June 2, 2010, that did not include Malaysia. The USTR also stated that the Commission need not repeat analysis and discussion included in that earlier report. The USTR further asked that the Commission, to the extent appropriate, draw from discussion and analysis in its report delivered to USTR on June 30, 2006, relating to a U.S.-Malaysia FTA (investigation Nos. TA–131–033 and TA–2104–022, *U.S.-Malaysia Free Trade Agreement: Advice Concerning the Probable Economic Effect of Providing Duty-Free Treatment for Imports*).

As requested, the Commission will provide its report to the USTR by January 7, 2011. The USTR indicated that those sections of the Commission's report that relate to the advice and assessment of probable economic effects will be classified. The USTR also indicated that he considers the Commission's report to be an inter-agency memorandum that will contain pre-decisional advice and be subject to the deliberative process privilege.

Public Hearing: A public hearing in connection with these investigations will be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m., November 17, 2010. Requests to appear at the public hearing should be filed with the Secretary not later than 5:15 p.m., November 10, 2010, in accordance with the requirements in

the "Submissions" section below. All pre-hearing briefs and statements should be filed not later than 5:15 p.m., November 12, 2010; and all post-hearing briefs and statements should be filed not later than 5:15 p.m., November 26, 2010.

Written Submissions: In lieu of or in addition to participating in the hearing and filing briefs and statements relating to the hearing, interested parties are invited to file written submissions concerning these investigations. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., November 18, 2010. All written submissions must conform with the provisions of § 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform with the requirements of § 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties. The Commission may include some or all of the confidential business information submitted in the course of the investigations in the report it sends to the USTR. The Commission will not otherwise publish any confidential business information in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: October 15, 2010.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2010–26377 Filed 10–20–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree

Notice is hereby given that on September 17, 2010, an electronic version of a proposed Consent Decree was lodged in the United States District Court for the Western District of Kentucky in *United States and the Commonwealth of Kentucky* v. *Westlake Vinyls, Inc. and Westlake PVC Corporation,* No. 5:10–CV–00168–TBR. The Consent Decree resolves claims of the United States and the Commonwealth of Kentucky against Westlake Vinyls, Inc. and Westlake PVC Corporation ("Westlake") for civil penalties and injunctive relief based on violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.,* as well as the Air Implementation Plan for the Commonwealth of Kentucky (the "Kentucky SIP") promulgated and approved by EPA pursuant to the Clean Air Act; the Clean Water Act, 33 U.S.C. 1251 *et seq.,* and applicable laws and regulations implementing the Clean Water Act; the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.* and implementing regulations; Sections 103(a) and 109(c) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9603(a) and 9609(c), and implementing regulations codified at 40 CFR part 302; and sections 304, 313 and 325(b)(3) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. 11004, 11013 and 11045(b)(3).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States et al.* v. *Westlake Vinyls, Inc. et al.,* No. 5:10–CV–00168–TBR and DOJ No. 90–5–2–1–08097.

Under the proposed consent decree, Westlake will perform injunctive relief. With regard to Clean Air Act injunctive relief, Westlake will implement a reroute of certain vent streams so that at least 40% of the emissions from an absorber vent can be routed to the operating incinerator in case of an incinerator outage. The company has installed flow meters that will measure for compliance. Westlake will follow a specific protocol for three years in the case of both planned and unplanned incinerator outages. During all incinerator outages, Westlake will maintain the absorber vent as a Group 2 process vent under the Hazardous Organic NESHAP regulations.

For three years, Westlake will also implement an enhanced Leak Detection and Repair program to control emissions of hazardous air pollutants. In addition, Westlake will implement an enhanced daily monitoring for the cooling towers according to a protocol approved by EPA and the Commonwealth.

Under the consent decree, Westlake will submit revised Leak Detection and Elimination Plans, as required by applicable regulations, for the vinyl chloride and the polyvinyl chloride plants, including a Leak Detection Plan and an Area Monitoring Plan, with specific changes as outlined in the consent decree.

Westlake will review the most recent Total Annual Benzene ("TAB") report for the vinyl chloride plant to determine if the TAB report is in compliance with the compliance option Westlake has selected and will provide a report to EPA and the Commonwealth.

For purposes of New Source Review permitting under the Clean Air Act, the consent decree specifies that the polyvinyl chloride plant and the vinyl chloride plant are under Westlake's common control, and Westlake will not contest administratively or judicially a finding by the Commonwealth or any other permitting authority under the Clean Air Act that the two plants are a "single source" for purposes of permitting.

With respect to Resource Conservation and Recovery Act injunctive relief, Westlake will conduct a subsurface investigation and will perform any necessary remediation at various lift stations at the polyvinyl chloride plant. Westlake will sample and test the integrity of lift stations 7 and 9 pursuant to an approved workplan and will perform a subsurface investigation of the facility if EPA decides one is required. In any case, Westlake will perform an investigation for Lift 8 pursuant to an approved work plan. Westlake will implement any corrective measures required by EPA, and will post financial assurance.

With regard to reporting of releases of hazardous substances under EPCRA/CERCLA, Westlake will review its

training procedures to ensure that all personnel are adequately trained and establish standard operating procedures. Westlake will modify its Spill/Release Reporting Policy according to protocol designed by EPA.

For Clean Water Act injunctive relief, Westlake will update its Spill Prevention Control and Countermeasures Plan ensuring that all regulated tanks are included and will comply with the plan.

The consent decree resolves the civil claims in the complaint filed in the case as well as violations listed in notices of violation issued to Westlake through the date of lodging of the decree on September 17, 2010. The United States will also covenant not to sue or take administrative action under Section 3008(a) and (h) of Resource Conservation and Recovery Act, 42 U.S.C. 6928(a) and (h), against Westlake for performance of the Resource Conservation and Recovery Act injunctive relief at the polyvinyl chloride plant, conditioned upon satisfactory performance.

EPA estimates that there will be a substantial reduction in hazardous air pollutant emission under the terms of the proposed consent decree. The incinerator rerouting, along with improved Leak Detection and Repair compliance, should result reductions of vinyl chloride emissions by approximately 2,280 pounds per year, ethylene emissions by approximately 204,687 pounds per year, and 1,2 dichloroethane emissions by approximately 1,284 pounds per year.

Under the proposed consent decree, Westlake will pay a civil penalty of $800,000, of which $700,000 will be paid to the United States and $100,000 will be paid to the Commonwealth. Due to the Clean Water Act violations, $12,500 of the civil penalty will go to Oil Spill Liability Trust Fund pursuant to 33 U.S.C. 132l(s).

The Consent Decree may be examined at the Office of the United States Attorney for the Western District of Kentucky, 501 Broadway, Room 29, Paducah, Kentucky 42001. During the public comment period, the Consent Decree may also be examined on the following Department of Justice: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood, *tonia.fleetwood@usdoj.gov,* Fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $43.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–26415 Filed 10–20–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0051]

Manlifts; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard on Manlifts (29 CFR 1910.68).

DATES: Comments must be submitted (postmarked, sent, or received) by December 20, 2010.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0051, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2010–0051) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The Standard specifies two paperwork requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of the requirements is to reduce workers' risk of death or serious injury by ensuring that manlifts are in safe operating condition.

Periodic Inspections and Records (paragraph (e)). This provision requires that each manlift be inspected at least once every 30 days and it also requires that limit switches shall be checked weekly. The manlift inspection is to cover at least the following items: steps; step fastenings; rails; rail supports and fastenings; rollers and slides; belt and belt tension; handholds and fastenings; floor landings; guardrails; lubrication; limit switches; warning signs and lights; illumination; drive pulley; bottom (boot) pulley and clearance; pulley supports; motor; driving mechanism; brake; electrical switches; vibration and misalignment; and any "skip" on the up or down run when mounting a step (indicating worn gears). A certification record of the inspection must be prepared upon completion of the inspection. The record must contain the date of the inspection, the signature of the person who performed the inspection, and the serial number or other identifier of the inspected manlift.

Disclosure of Inspection Certification Records. Employers are to maintain the certification record and make it available to OSHA compliance officers. This record provides assurance to employers, workers, and compliance officers that manlifts were inspected as required by the Standard. The inspections are made to keep equipment in safe operating condition, thereby preventing manlift failure while carrying workers to elevated worksites. These records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting to retain its current burden hour estimate of 37,801 hours.

Type of Review: Extension of a currently approved collection.

Title: Manlifts (29 CFR 1910.68).

OMB Number: 1218–0226.

Affected Public: Business or other for-profits.

Number of Respondents: 3,000.

Frequency: On occasion; Monthly.

Average Time per Response: Varies from 2 minutes (.03 hour) for an employer to disclose the inspection certification record to 1 hour to inspect a manlift.

Estimated Total Burden Hours: 37,801.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0051). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, TTY (877) 889–5627.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4–2010 (75 FR 55355).

Signed at Washington, DC, on October 18, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–26500 Filed 10–20–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Existing Mandatory Safety Standard

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of a petition for modification filed by the party listed below to modify the application of an existing mandatory safety standard published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petition must be received by the Office of Standards, Regulations and Variances on or before November 22, 2010.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 1–202–693–9441.

3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect a copy of the petition and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2010–003–M.

Petitioner: Resolution Copper Mining, LLC, Resolution Mine, MSHA I.D. No. 02–00152 located in Pinal County, Arizona.

Regulation Affected: 30 CFR 57.19076 (Maximum speeds for hoisting persons in buckets).

Modification Request: The petitioner requests a modification of the existing standard to permit miners to be hoisted in open ended buckets at a rate of 1200 feet per minute (FPM). The petitioner states that: (1) Personnel would ride inside of a completely empty bucket in accordance with 30 CFR 57.19071 (Riding in skips or buckets), while standing on the bucket floor. The round open bucket is 8.5 feet high and 6 feet in diameter. On average, while standing on the bucket floor, the top of the miner's head would be 2.5 feet below the open bucket rim; (2) the buckets are in compliance with 30 CFR 57.19050 (Bucket requirements) as follows: (a) Buckets are securely attached to a crosshead at all times while traveling in the shaft; (b) the bucket has overhead protection by means of a canopy permanently installed on the crosshead; (c) the buckets have sufficient depth to transport persons safely in a standing position; and (d) the buckets are attached to the crosshead by a "Dolly Ball" at the crosshead and do not have bails attached to their lower half; (3) all buckets are equipped with engineered anchor points inside the bucket located under the bucket foot wells on the bucket walls. Personnel are required to be securely anchored to these anchors with a full body harness and safety lanyard at all times while traveling in the bucket; (4) the emergency braking deceleration rate of the sinking hoist running at 1500 FPM is 11.4 feet per second per second (11.4 ft/s^2) when moving up, and 10.7 feet per second per second (10.7 ft/s^2) when moving down. This deceleration is significantly lower than the maximum deceleration rate of 16 feet per second per second (16 ft/s^2) prescribed in 30 CFR 57.19062. At the intended man hoisting speed of 1200 FPM the deceleration rates will be much lower; (5) the sinking hoist is operated under computer programmable logical controls (PLC). There are controls that verify the crosshead is attached to the bucket all times while traveling in the shaft; (6) there are 3 sets of safety doors in the shaft. The doors are located at the shaft collar on the surface, the ventilation level is 100 feet below the surface, the bucket dump and the Never Sweat Level is 1190 feet below the surface, and there is also safety backsplashes located at the bucket dump which is 800 feet below the surface. Each of these installations have proximity switches and electronic monitoring verifying that the crosshead is attached to the bucket when they pass through these safety systems; and (7) the hoist deceleration rates at 1200 FPM provide at least the same measure of protection as the existing standard.

Dated: October 15, 2010.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2010–26483 Filed 10–20–10; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of a Matter To Be Added to the Agenda for Consideration at an Agency Meeting

TIME AND DATE: 10 a.m., Thursday, October 21, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

Matters To Be Considered

4a. Briefing—NCUSIF Public Education Campaign.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2010–26713 Filed 10–19–10; 4:15 pm]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 22, 2010. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. Applicant

Permit Application No. 2011–021.

Ms. Rebecca M. Dickhut, Virginia Institute of Marine Sciences, Gloucester Point, VA 23062.

Activity for Which Permit Is Requested

Import into the U.S.A. The applicant plans to import frozen seabird tissue samples, collected by other researchers, for use in experiments back at the institutions laboratories. The applicant hopes to receive tissue samples from Adelie, Gentoo, Chinstrap, and Emperor penguins and Southern Giant Petrels. The samples will be used to: (a) Trace the movement of persistent organic pollutants (POPs) stored in glacier ice into the Antarctica marine food web, and (b) provide insight into the dietary preferences and feeding ecology of Antarctic seabirds. The research will provide an understanding of the potential coupling between global climate change and mobilization of glacier reservoirs of contaminants, and is likely to serve as a case study for understanding the potential future impact of contaminants store din glaciers on regional aquatic ecosystems.

Location

Western Antarctica.

Dates

January 1, 2011 to December 31, 2012.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2010–26472 Filed 10–20–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Reliability and PRA; Notice of Meeting

The ACRS Subcommittee on Reliability and PRA will hold a meeting on November 16, 2010, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

November 16, 2010—8:30 a.m. Until 5 p.m.

The Subcommittee will review the current state of licensee efforts on the fire protection program transition to National Fire Protection Association (NFPA) Standard 805. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Girija Shukla (Telephone 301–415–6855 or E-mail: *Girija.Shukla@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: October 14, 2010.

Antonio F Dias,

Branch Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–26494 Filed 10–20–10; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on AP1000; Notice of Meeting

The ACRS Subcommittee on AP1000 will hold a meeting on November 17–19, 2010, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary to Westinghouse Electric Company LLC, and its contractors, pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, November 17, 2010, Thursday, November 19, 2010, Friday, November 20, 2010—8:30 a.m. Until 5 p.m.

The Subcommittee will review selected chapters of the Final Safety Evaluation Report (FSER) associated with revisions to the AP1000 Design Control Document (DCD) and followup items from the previous AP1000 subcommittee meetings. The Subcommittee will hear presentations by and hold discussions with NRC staff, Westinghouse Electric Company, LLC, and other interested persons. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Weidong Wang (Telephone 301–415–6279 or E-mail: *Weidong.Wang@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each

presentation or handout should be provided to the Designated Federal Official thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: October 14, 2010.

Antonio F. Dias,

Branch Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–26496 Filed 10–20–10; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Power Uprates; Notice of Meeting

The ACRS Subcommittee on Power Uprates will hold a meeting on November 17, 2010, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary to AREVA and its contractors pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

November 17, 2010—8:30 a.m. Until 12:30 p.m.

The Subcommittee will review the staff's evaluation of RAMONA5–FA, "A Computer Program for BWR Transient Analysis in the Time Domain." The Subcommittee will hear presentations by and hold discussions with NRC staff, AREVA, and other interested persons. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Zena Abdullahi (Telephone 301–415–8716 or E-mail: *Zena.Abdullahi@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: October 14, 2010.

Cayetano Santos,

Branch Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–26502 Filed 10–20–10; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Reliability and PRA; Notice of Meeting

The ACRS Subcommittee on Reliability and PRA will hold a meeting on November 17, 2010, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

November 17, 2010—1 p.m. Until 5 p.m.

The Subcommittee will review the plan and schedule for developing a level 3 Probabilistic Risk Assessment (PRA). The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Hossein Nourbakhsh (telephone 301–415–5622 or e-mail: *Hossein.Nourbakhsh@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO.

Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: October 14, 2010.

Antonio F. Dias,

Branch Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–26495 Filed 10–20–10; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted by the U.S. Nuclear Regulatory Commission's (NRC's) Advisory Committee on Reactor Safeguards (ACRS) pursuant to the Federal Advisory Committee Act (FACA). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACRS is a statutory group established by Congress to review and report on nuclear safety matters and applications for the licensing of nuclear facilities. The Committee's reports become a part of the public record.

The ACRS meetings are conducted in accordance with FACA; they are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those related to radiological safety.

The ACRS meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process.

General Rules Regarding ACRS Full Committee Meetings

An agenda will be published in the **Federal Register** for each full Committee meeting. There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day on another day of the same meeting. Persons planning to attend the meeting may contact the Designated Federal Officer (DFO) specified in the **Federal Register** Notice prior to the meeting to be advised of any changes to the agenda that may have occurred.

The following requirements shall apply to public participation in ACRS full Committee meetings:

(a) Persons who plan to submit written comments at the meeting should provide 35 copies to the DFO at the beginning of the meeting. Persons who cannot attend the meeting, but wish to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the DFO specified in the **Federal Register** Notice, care of the Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments should be limited to items being considered by the Committee. Comments should be in the possession of the DFO 5 days prior to the meeting to allow time for reproduction and distribution.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the DFO; if possible, the request should be made 5 days before the meeting, identifying the topic(s) on which oral statements will be made and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the DFO.

(d) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the use of such equipment will not interfere with the conduct of the meeting. The DFO will have to be notified prior to the meeting and will authorize the use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, *etc.,* in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(e) A transcript will be kept for certain open portions of the meeting and will be available in the NRC Public Document Room (PDR), One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD 20852–2738. A copy of the certified minutes of the meeting will be available at the same location 3 months following the meeting. Copies may be obtained upon payment of appropriate reproduction charges. ACRS meeting agenda, transcripts, and letter reports are available through the PDR at *PDR.Resource@nrc.gov,* by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs/.*

(f) Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Specialist, (301–415–8066) between 7:30 a.m. and 3:45 p.m. Eastern Time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

ACRS Subcommittee Meetings

In accordance with the revised FACA, the agency is no longer required to apply the FACA requirements to meetings conducted by the Subcommittees of the NRC Advisory Committees, if the Subcommittee's recommendations would be independently reviewed by its parent Committee.

The ACRS, however, has chosen to conduct its Subcommittee meetings in accordance with the procedures noted above for ACRS full Committee meetings, as appropriate, to facilitate public participation, and to provide a forum for stakeholders to express their views on regulatory matters being considered by the ACRS. When Subcommittee meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 50 copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The DFO should be informed of such an agreement at least 5 working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the DFO prior to the beginning of the meeting for admittance to the closed session.

Meeting Dates for Calendar Year 2010

The ACRS meeting dates for Calendar Year 2011 are provided below:

579	January 13–14, 2011.	Thursday–Friday
580	February 10–12, 2011.	Thursday–Saturday
581	March 10–12, 2011.	Thursday–Saturday
582	April 7–9, 2011.	Thursday–Saturday
583	May 12–14, 2011.	Thursday–Saturday
584	June 8–10, 2011.	Wednesday–Friday
585	July 13–15, 2011.	Wednesday–Friday
	August 2011	(No Meeting)
586	September 8–10, 2011.	Thursday–Saturday
587	October 6–8, 2011.	Thursday–Saturday
588	November 3–5, 2011.	Thursday–Saturday
589	December 1–3, 2011.	Thursday–Saturday

Dated: October 14, 2010.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2010–26503 Filed 10–20–10; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Program Services Evaluation Surveys, OMB Control No. 3206–NEW

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a new information collection request (ICR) 3206–NEW, Program Services Evaluation Surveys. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on June 21, 2010 at 75 FR 35092 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until November 22, 2010. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) leads Federal agencies in shaping human resources management systems to effectively recruit, develop, manage and retain a high quality and diverse workforce. Program services evaluation surveys are valuable tools to gather information from our customers so we can design and implement new ways to improve our programs to meet their needs. This collection request includes surveys that we currently use or plan to use during the next three years to measure our ability to deliver program services to meet our customer needs. The survey instruments include direct mail, telephone contact, focus groups and web exit surveys. Our customers include the general public, Federal benefit recipients, Federal agencies and Federal employees. We estimate 4,310 program services evaluation surveys will be completed in the next 3 years. The time estimate varies from 1 minute to 40 minutes to complete. The estimated burden is 1,126 hours.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–26539 Filed 10–20–10; 8:45 am]

BILLING CODE 6325–47–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Performance Measurement Surveys, OMB Control No. 3206–NEW

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a new information collection request (ICR) 3206–NEW, Performance Measurement Surveys. As required by the Paperwork

Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on June 21, 2010 at 75 FR 35092 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until December 20, 2010. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) leads Federal agencies in shaping human resources management systems to effectively recruit, develop, manage and retain a high quality and diverse workforce. Performance measurement surveys are valuable tools to gather information from our customers so we can design and implement new ways to improve our performance to meet their needs. This collection request includes surveys that we currently use or plan to use during the next three years to measure our performance in providing services to meet our customer needs. The survey instruments include direct mail, telephone contact, focus groups and web exit surveys. Our customers include the general public, Federal benefit recipients, Federal agencies and Federal employees. We estimate 210,900 performance measurement surveys will be completed in the next 3 years. The time estimate varies from 15 minutes to 20 minutes to complete. The estimated burden is 70,275 hours.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–26540 Filed 10–20–10; 8:45 am]

BILLING CODE 6325–47–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Customer Satisfaction Surveys, OMB Control No. 3206–0236

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0236, Customer Satisfaction Surveys. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on June 21, 2010 at 75 FR 35093 allowing for a 60-day public comment period. One comment was received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until November 22, 2010. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) leads Federal agencies in shaping human resources management systems to effectively recruit, develop, manage and retain a high quality and diverse workforce. We need to solicit input from our customers to evaluate our performance in providing services. Customer satisfaction surveys are valuable tools to gather information from our customers so we can design and implement new ways to improve our service to meet their needs. This collection request includes surveys that we currently use or plan to use during the next three years to measure our ability to meet our customer needs. The survey instruments include direct mail, telephone contact, focus groups and web exit surveys. Our customers include the general public, Federal

benefit recipients, Federal agencies and Federal employees. The currently approved collection has been revised to exclude performance measurement surveys and program services evaluation surveys. Only those surveys relating specifically to customer satisfaction will be associated with OMB Control No. 3206–0236. We estimate 495,182 customer satisfaction surveys will be completed in the next 3 years. The time estimate varies from 2 minutes to 30 minutes to complete. The estimated burden is 34,152 hours.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–26541 Filed 10–20–10; 8:45 am]

BILLING CODE 6325–47–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63116; File No. SR–NYSEArca–2010–89]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.37, Order Execution, To Clarify Users' Ability To Instruct NYSE Arca To Bypass Non-Regulation NMS Protected Market Centers When Routing Away

October 15, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 13, 2010, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.37, Order Execution, to clarify Users' ability to instruct NYSE Arca to bypass non-Regulation NMS protected market centers when routing away. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, at the Commission's Web site at *http://www.sec.gov,* and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.37, Order Execution, to clarify Users' ability to instruct NYSE Arca when routing eligible unexecuted orders to bypass any market centers that are not posting Protected Quotations within the meaning of Regulation NMS.

In March 2008, NYSE Arca Equities began offering clients access to undisplayed liquidity via Indications of Interest by adding several new routing venues ("IOI Routing Functionality"). In May 2008, NYSE Arca Equities provided Users the ability to opt out of this IOI Routing Functionality. Users are currently able to opt out of IOI Routing Functionality while retaining the ability to use the full array of routable orders by marking any routable order as not eligible to route to market centers that are not posting Protected Quotations.

In order to increase awareness of this option, the Exchange now proposes to add the following text to proposed Rule 7.37(d)(4):

For an order that has not been executed in its entirety pursuant to paragraphs (a) through (c) of this Rule, and which is otherwise eligible to route away, Users may instruct NYSE Arca to bypass any market centers that are not posting Protected Quotations within the meaning of Regulation NMS.

The Exchange also notes that the proposed rule is substantially similar to Nasdaq Rule 4758 (1)(A)(iv).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[3] of the Act, in general, and furthers the objectives of Section 6(b)(5)[4] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed amendment is consistent with the goal of removing impediments to a free and open market because the changes proposed herein will clarify currently existing routing options designed to give Users flexibility and control over how their orders route to away market centers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6)(iii) thereunder.[6]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NYSEArca–2010–89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEArca–2010–89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2010–89 and should be submitted on or before November 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–26508 Filed 10–20–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63117; File No. SR–ISE–2010–101]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Enhancements to the Exchange's Electronic Trading Platform

October 15, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on October 7, 2010, International Securities Exchange, LLC ("ISE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain rules to facilitate enhancements to its electronic options trading system. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com*, at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://*www.sec.gov.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has developed an enhanced technology trading platform. To assure a smooth transition, the Exchange will migrate option classes from its current trading system to the new trading system over time (the "Transition Period").[5] While the new trading platform will conform to the ISE's current trading rules, with a few proposed changes discussed below, some functionality offered on the current system will be phased-in during the initial implementation of the new trading platform. Accordingly, the Exchange seeks to identify in its rules any differences in the execution of orders on the new trading platform during the Transition Period. The Exchange will issue an information circular regarding these rule changes, and will also issue information circulars prior to transferring options classes to the new trading platform during the Transition Period.

Changes to Existing ISE Rules

The Exchange proposes to implement two new order types, Opening Only Orders and Good-Till-Date Orders on the new trading platform. An Opening Only order is a limit order that can be entered for the opening rotation only. Any portion of the order that is not executed during the opening rotation is cancelled. This order type currently is available on other options exchanges.[6]

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Options classes will be transferred from the current trading platform to the new trading platform. The same options cannot trade on both systems at the same time. The Exchange has been working with its members to assure a smooth transition to the new trading platform and will continue to do so up to the launch of the new technology and during the Transition Period. The name of the new trading platform, which as yet remains unannounced, will be communicated to Exchange members via circular.

[6] *See* NYSE Arca Rule 6.62(r) which defines an "Opening Only Order" as "a market order or limit order which is to be executed in whole or in part during the opening auction of an options series or not at all. Any portion not so executed is to be treated as cancelled." *See also* NASDAQ OMX PHLX ("PHLX") Rule 1066(c)(5), which defines an "Opening-Only-Market Order" as "a market order

A Good-Till-Date Order is a limit order to buy or sell which, if not executed, will be cancelled at the sooner of the end of the expiration date assigned to the order, or the expiration of the series. BATS Exchange, Inc. ("BATS") offers an order type that is similar in all respect but for the time when the order terminates.[7] ISE proposes to adopt new Supplementary Material .02 to Rule 715 to specify that these two new order types are applicable only to option classes that trade on the new trading platform.

The Exchange also proposes to modify the Minimum Quantity order type on the new trading platform. Currently, a minimum quantity order is an order that is available for partial execution, but each partial execution must be for the specified number of contracts or greater. If the balance of the order after one or more partial executions is less than the minimum, such balance is treated as all-or-none.[8] On the new trading platform, the Exchange proposes to offer an enhanced version of this order type, one that will allow members to determine, after the initial minimum quantity is executed, whether they want any subsequent execution to be subject to the specified minimum quantity or not. If the member chooses not to have the minimum quantity applied after the first partial execution, the remaining balance of the order will trade as a regular order. ISE proposes to include the enhanced functionality of the Minimum Quantity Order in new Supplementary Material .02 to Rule 715, specifying that it is only available to options traded on the new trading platform.

Finally, the Exchange proposes to enhance one of the services the ISE offers market makers to help them manage their quotations on the new trading platform and to discontinue one that is no longer necessary. While each ISE market maker employs its own sophisticated proprietary quotation and risk management systems to determine the prices and sizes at which its quotes, ISE rule 804(g) contains several voluntary tools that market makers can use to assist them in managing their quotations.[9] ISE market makers are not required to use the ISE-provided functionality and can program their own systems to perform the same functions if they prefer.

On the new trading platform, the Exchange proposes to expand on the so call "speed bump" functionality contained in Rule 804(g)(1), which helps market makers manage their exposure across all series of a class. Currently, this functionality permits a market maker to establish parameters in the central system to move its quotations in all series of an option to an inferior price when the market maker trades a specified number of contracts in that class as a whole within a fixed time period. On the new trading platform, a market maker will have the ability to have its quotations removed based on the number of contracts traded, the percentage of the total of the market maker quotes that have traded, the absolute value of the net between contracts bought and contracts sold, and/or the absolute value of the net between (a) calls purchased plus puts sold, and (b) calls sold plus puts purchased. The Exchange will not offer the so called "step-up" functionality on the new trading platform contained in Rule 804(g)(3), which was designed to replenish the size of a market maker's quotation when it fell below an exchange-established minimum quotation size. This functionality has not proved useful to market makers. The Exchange proposes to include the services offered on the new trading platform in Supplementary Material .01 to Rule 804.

The Exchange notes that using the speed bump functionality offered by the Exchange does not alleviate market makers from any of the quotation requirements contained in the Exchanges rules.

Phased-In Functionality

Certain functionality currently available on the ISE will not immediately be available on the new trading platform. This functionality will be phased-in by the Exchange shortly after the initial launch of the system. Accordingly, the Exchange proposes to add supplementary material to the applicable rules to specify that such functionality is not available for options traded on the new trading platform,[10] as follows:

(i) The Exchange proposes to adopt Supplementary Material .10 to Rule 716 to specify that the Block, Facilitation and Solicited Order Mechanisms will not be available for options traded on the new trading platform.

(ii) The Exchange proposes to adopt Supplementary Material .01 to Rule 718, to specify that Cabinet trading will not be available for options traded on the new trading platform.

(iii) The Exchange proposes to adopt Supplementary Material .03 to Rule 722 to specify that Complex Orders will not be available for options traded on the new trading platform.

(iv) The Exchange proposes to adopt Supplementary Material .08 to Rule 723 to specify that the Price Improvement Mechanism will not be available for options traded on the new trading platform.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b),[11] in general, and Section 6(b)(5)[12] in particular, that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes the new trading platform will improve the efficiency and quality of options executions on the Exchange, and that the proposed new order types and enhanced speed bump functionality on the new trading platform will provide greater flexibility for Exchange users in how they quote and trade, while also enhancing the overall market quality for options traded on the Exchange. The Exchange further believes that the proposed rule change will facilitate an orderly transition from the Exchange's current technology trading platform to the new trading platform.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

which is to be executed in whole or in part during the opening rotation of an options series or not at all" and Rule 1066(c)(9), which defines a "Limit on Opening Order" as "a limit order which is to be executed in whole or in part during the opening rotation of an options series or not at all.

[7] *See* BATS Rule 11.9(b)(4), which defines a "Good 'til Day Order" as a limit order to buy or sell which, if not executed, will be cancelled at the expiration time assigned to the order, which can be no later than the close of the After Hours Trading Session."

[8] *See* ISE Rule 715(l). *See Also* Securities Exchange Act Release No. 61640 (March 3, 2010), 75 FR 11608 (March 11, 2010) (SR–ISE–2010–13).

[9] *See* Securities Exchange Act Release No. 51050 (January 18, 2005), 70 FR 3758 (January 26, 2005) (order approving SR–ISE–2004–31).

[10] As the functionality is phased-in, the Exchange will file a proposal under Section 19(b)(3)(A) of the Exchange Act and Rule 19b–4(f)(5) thereunder and delete the supplementary material from its rules. The Exchange will also notify members via circular as the functionality is made available on the new trading platform.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2010–101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2010–101. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2010–101 and should be submitted on or before November 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–26509 Filed 10–20–10; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63110; File No. SR–NASDAQ–2010–107]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval to a Proposed Rule Change To Modify the Eligibility Criteria for the Second Compliance Period for a Bid Price Deficiency on the Nasdaq Capital Market

October 14, 2010.

I. Introduction

On August 25, 2010, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the eligibility criteria in order for a listed company to qualify for the second compliance period for a bid price deficiency on the Nasdaq Capital Market. The proposed rule change was published for comment in the **Federal Register** on September 2, 2010.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Nasdaq is proposing, in order for a company to receive a second compliance period for a bid price deficiency on the Nasdaq Capital Market ("Capital Market"), to modify the eligibility criteria concerning market value of publicly held shares. Under the current Nasdaq rules, when a company has a closing bid price below $1 for 30 consecutive days, it is deemed deficient under Nasdaq's bid price continued listing standard, and promptly receives written notice that it has 180 calendar days from such notification to regain compliance.[4] Compliance can be achieved by maintaining a minimum $1 closing bid price for ten consecutive days. At the expiration of the 180-day compliance period, a company can receive an additional 180-day compliance period,[5] provided it is either already listed on the Capital Market or transfers to that market and satisfies all of the Capital Market's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62782 (August 27, 2010), 75 FR 53994 ("Notice").

[4] *See* Nasdaq Rule 5810(c)(3)(A).

[5] In its filing, Nasdaq refers to the 180-day compliance period as a "grace" period.

initial listing criteria, except for bid price.[6]

Nasdaq has observed that many companies fail to qualify for the second compliance period because they do not meet the market value of publicly held shares requirement for initial listing on the Capital Market. Nasdaq therefore is proposing to ease the requirements for the second compliance period on the Capital Market by allowing a company to qualify if it satisfies the lower continued listing requirement for market value of publicly held shares, thereby enabling more companies to be eligible for the second compliance period.[7] The company would still need to meet all of the other initial listing criteria for Capital Market other than bid price.[8]

Under the proposal, the company will need to notify Nasdaq of its intent to cure the bid price deficiency. If a company does not indicate its intent to cure the deficiency, or if it does not appear to Nasdaq staff that it is possible for the company to cure the deficiency, the company would not be eligible for the second compliance period under the Capital Market rules. Under the proposal, a company listed on Nasdaq's Global or Global Select Markets would be permitted to transfer to the Capital Market if it meets the applicable market value of publicly held shares requirement for continued listing and all other applicable requirements for initial listing on the Capital Market (except for the bid price requirement), and notifies Nasdaq of its intent to cure the bid price deficiency.[9] Once on the Capital Market, the company would be eligible for the second compliance period on the Capital Market, unless it does not appear to Nasdaq staff that it is possible for the Company to cure the deficiency.[10] In its filing, Nasdaq noted that under the proposal, while certain companies that do not currently qualify for the second compliance period could receive an additional 180 days to comply with the bid price requirement, the proposed rule change would not extend the overall maximum time of 360 days that is currently available to qualifying companies.

Nasdaq also proposes to remove language in Rule 5810(c)(3) referencing the payment of fees by a company which transfers to the Capital Market. The current language implies that there are fees applicable to such a company. However, no fees are applicable under Rule 5920(a) to such a company. Nasdaq is proposing to delete the language, to remove any confusion, and has also proposed some other clarifying and non-substantive changes to the rule.[11]

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[12] and, in particular, the requirements of Section 6 of the Act.[13] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that have, or in the case of an initial public offering will have, sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained, and so that only companies suitable for listing remain listed on a national securities exchange.

The Commission believes that the proposal to modify the eligibility criteria for the second compliance period for a bid price deficiency on the Capital Market is reasonable and consistent with the Act, and furthers investor protection and the public interest. As stated above, Nasdaq has observed that many companies fail to qualify for the second compliance period because they do not meet the market value of publicly held shares requirement for initial listing on the Capital Market. The Commission notes that to qualify for a second compliance period, the company would still need to meet all of the other initial listing criteria for Capital Market other than bid price, as well as the continued listing requirement for market value of publicly held shares.[15] These standards should help continue to ensure that only companies that meet the minimum requirements for adequate depth and liquidity remain listed for an extended period of time on the Capital Market.

In addition, the company will need to notify Nasdaq of its intent to cure the bid price deficiency. If a Capital Market company does not indicate its intent to cure the deficiency, or if it does not appear to Nasdaq staff that it is possible for the company to cure the deficiency, the company would not be eligible for the second compliance period. Similarly, a company listed on the Global or Global Select Markets would be permitted to transfer to the Capital Market if it meets the applicable market value of publicly held shares requirement for continued listing and all other applicable requirements for initial listing on the Capital Market (except for the bid price requirement) and notifies Nasdaq of its intent to cure the bid price deficiency. Once on the Capital Market, the company would be eligible for the second compliance

[6] *See* Nasdaq Rule 5810(c)(3)(A)(i)–(ii).

[7] The initial listing requirements for market value of publicly held shares for common stock on the Capital Market range from $5 million to $15 million, depending on the listing standard under which the company qualifies; the continued listing requirement is $1 million. *See* Nasdaq Rules 5505(b) and 5555(a)(4).

[8] The initial listing standards for the Capital Market are set forth in Nasdaq Rule 5505 and include an equity standard, market value of listed securities standard, and a net income standard. *See* Nasdaq Rule 5505.

[9] As noted above, Nasdaq Global and Global Select companies can currently receive the additional 180 day compliance period, provided they meet all the applicable Capital Market initial requirements and transfer to that market.

[10] According to Nasdaq, once a company transfers to the Capital Market, Nasdaq would assess whether it is possible for the company to cure the deficiency. If not, the company would be denied the second 180 day compliance period, and Nasdaq would commence delisting proceedings for the company as a Capital Market listing.

[11] *See* Notice, *supra* note 3.

[12] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

[15] *See supra* note 8.

period on the Capital Market, unless it does not appear to Nasdaq staff that it is possible for the Company to cure the deficiency.

The Commission believes that requiring a company to affirmatively state its intent to cure the bid price deficiency and Nasdaq staff to determine whether it is possible for the company to cure that deficiency, provides further protections to investors, by helping to ensure that only companies that are serious and capable of gaining compliance with the Capital Market listing standards within the timeframe provided qualify for the second compliance period. In this regard, the Commission would expect a thorough review to ensure that it is possible for the bid price deficiency to be cured at the end of the second 180 day compliance period and, if not, would expect Nasdaq to immediately commence delisting proceedings.

In approving the Nasdaq's proposal, the Commission recognizes that certain companies that do not currently qualify for the second compliance period could receive additional time to remain listed on a public market. The proposal, however, does not extend the overall maximum time of 360 days that a company may remain listed before delisting proceedings will commence. Moreover, the proposal eliminates the automatic nature of the second 180 day bid price compliance period that exists under the current rules. Further, notwithstanding the change in eligibility criteria for a second compliance period, the Commission expects Nasdaq to monitor companies closely that are out of compliance and use its authority to delist issuers in a prompt, efficient, and fair manner where necessary and appropriate, in accordance with Nasdaq Rule 5100, including where there are public interest or other concerns such as low price or market value, that make continued listing unwarranted.

Finally, the Commission finds that Nasdaq's proposal to remove language in Rule 5810(c)(3) will reduce confusion regarding the application of the rule by clarifying that there are no fees applicable to a company which transfer to the Capital Market. The additional changes proposed by Nasdaq to the text of Rule 5810(c)(3)(A)(i)–(ii) conform the rule language and format of the two paragraphs and clarify that Nasdaq will assess a company for compliance with applicable listing requirements based on the company's most recent public filings and market information. The Commission believes that these changes either clarify the rule or are non-substantive.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NASDAQ–2010–107), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–26474 Filed 10–20–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

In the Matter of Cape Systems Group, Inc., Caribbean Cigar Company, Casual Male Corp., Cell Power Technologies, Inc., Cellmetrix, Inc. (f/k/a BCAM International, Inc.), Cellular Products, Inc. (n/k/a 872 Main Street Corp.), Ceptor Corp., CGS Scientific Corp., and Ciprico, Inc., File No. 500–1; Order of Suspension of Trading

October 19, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cape Systems Group, Inc. because it has not filed any periodic reports since the period ended December 31, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Caribbean Cigar Company because it has not filed any periodic reports since the period ended September 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Casual Male Corp. because it has not filed any periodic reports since the period ended February 3, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cell Power Technologies, Inc. because it has not filed any periodic reports since the period ended April 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cellmetrix, Inc. (f/k/a BCAM International, Inc.) because it has not filed any periodic reports since the period ended June 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cellular Products, Inc. (n/k/a 872 Main Street Corp.) because it has not filed any periodic reports since the period ended December 31, 1994.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ceptor Corp. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CGS Scientific Corp. because it has not filed any periodic reports since the period ended February 29, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ciprico, Inc. because it has not filed any periodic reports since the period ended December 31, 2007.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on October 19, 2010, through 11:59 p.m. EDT on November 1, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–26698 Filed 10–19–10; 11:15 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes a new information collection for OMB approval.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection to the OMB Desk Officer and SSA Reports Clearance Officer to the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA. *Fax:* 202–395–6974. *E-mail address: OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. *Fax:* 410–965–6400. *E-mail address: OPLM.RCO@ssa.gov*.

SSA has submitted the information collection listed below to OMB for clearance. Your comments on the information collection would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than November 22, 2010. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

Benefit Offset National Demonstration—0960–NEW. SSA is undertaking the Benefit Offset National Demonstration (BOND)—a demonstration and evaluation of policy changes and services on the Social Security Disability Insurance (SSDI) program—in an effort to produce strong evidence about the effectiveness of potential solutions that would improve the historically very low rate of return to work among SSDI beneficiaries. Under current law, Social Security beneficiaries lose their SSDI benefit if they have earnings and/or work activity above the threshold of Substantial Gainful Activity after completing the Trial Work Period and two-month grace period. The benefit-offset component of this demonstration will reduce benefits by $1 for each $2 in earnings above the BOND threshold, resulting in a gradual reduction in benefits as earnings increase.

The experimental design for BOND will test a benefit offset alone and in conjunction with enhanced work incentives counseling. The central research questions include:

- What is the effect of the benefit offset alone on employment and other outcomes?
- What is the effect of the benefit offset in combination with enhanced work incentives counseling on employment and other outcomes?

The proposed public survey data collections will have four components—an impact study, a cost-benefit analysis, a participation analysis, and a process study. The data collections are a primary source for data to measure the effects of a more generous benefit offset and the provision of enhanced work incentives counseling on SSDI beneficiaries' work efforts and earnings. Ultimately, these data will benefit researchers, policy analysts, policy makers and the United States Congress in a wide range of program areas. The effects of BOND on the well-being of SSDI beneficiaries could manifest themselves in many dimensions and could be relevant to an array of other public programs. This project offers the first opportunity to obtain reliable measures of these effects based upon a nationally representative sample. The long-term indirect benefits of this research are therefore likely to be substantial. Respondents are SSDI beneficiaries and concurrent SSDI and Supplemental Security Income beneficiaries who we randomly assign to the study (Stage 1), and SSDI beneficiaries who agree to participate in the study (Stage 2).

Type of Request: Request for a new information collection.

Note: This is a correction notice. We updated the burden figures, shown below, since we published the 60-day **Federal Register** Notice for this collection on August 12, 2010 at 75 FR 49013.

Survey	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Total annual burden (hours)
Participation Agreement	12,600	1	12,600	20	4,200
Baseline Survey	12,600	1	12,600	41	8,610
Interim Survey	10,080	1	10,080	29	4,872
Stage 1 36-month Survey	8,000	1	8,000	49	6,533
Stage 2 36-month Survey	10,080	1	10,080	60	10,080
Enhanced Work Incentives Assessment	3,000	1	3,000	35	1,750
Key Informant Interviews	100	7	700	60	700
Stage 2 Participant Focus Groups	600	1	600	90	900
Totals	57,060	.....	57,660	.....	37,645

Dated: October 15, 2010.

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2010–26384 Filed 10–20–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 33 (Sub-No. 289X)]

Union Pacific Railroad Company—Abandonment Exemption—in Pulaski County, AR

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 CFR part 1152 subpart F–*Exempt Abandonments* to abandon a 4.04-mile portion of its Camp Robinson Spur extending from milepost 345.64 to the end of the line at milepost 349.68, in Pulaski County, Ark.[1] The line traverses United States Postal Service Zip Code 72118.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within

[1] On October 7, 2010, UP supplemented its notice of exemption.

the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 20, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 1, 2010. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 10, 2010, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 N. Wacker Drive, #1920, Chicago, IL 60606–1718.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by October 26, 2010. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by October 21, 2011, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 18, 2010.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–26543 Filed 10–20–10; 8:45 am]

BILLING CODE 4915–01–P

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB 55 (Sub-No. 703X)]

CSX Transportation, Inc.—Abandonment Exemption—in Chesterfield and Darlington Counties, SC

On October 1, 2010, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 2.71-mile line of railroad on its Southern Region, Florence Division, Hamlet Subdivision, between milepost SJ 304.75, at Tabernacle Road, and milepost SJ 307.46, at Bobo Newsome Highway, in Chesterfield and Darlington Counties, S.C. (the line). The line traverses United States Postal Service Zip Codes 29101 and 29550 and includes stations at Darlco, FSAC 71202366, OPSL 2638, milepost SJ 306, and Robinson, FSAC 71202370, OPSL 2640, milepost SJ 307.

In addition to an exemption from the prior approval requirements of 49 U.S.C. 10903, CSXT seeks an exemption from 49 U.S.C. 10904 (offer of financial assistance procedures). In support, CSXT states that, following abandonment of the line, CSXT intends to reclassify the line as spur track and sell or lease it to Progress Energy Carolinas, Inc. (PEC), the sole shipper on the line, which will then use the line for expanded intra-plant operations. This request will be addressed in the final decision. In order to facilitate the reclassification of the line as spur track and the subsequent sale or lease of the line to PEC, CSXT has requested that the Board condition the abandonment upon CSXT and PEC entering an agreement providing for the sale or lease of the line from CSXT to PEC within 30 days after CSXT has consummated the abandonment and reclassified the line as spur track. This request will also be addressed in the final decision.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession concerning this matter will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, In Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 19, 2011.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 10, 2010. Each trail use request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 55 (Sub-No. 703X), and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Louis E. Gitomer, Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204. Replies to CSXT's petition are due on or before November 10, 2010.

Persons seeking further information concerning abandonment procedures

may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: October 18, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–26544 Filed 10–20–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 33 (Sub-No. 290X)]

Union Pacific Railroad Company—Abandonment Exemption—in Pulaski County, AR

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 CFR part 1152 subpart F–*Exempt Abandonments* to abandon a line of railroad known as the North Little Rock Junction Bridge Line, extending from milepost 343.65 to the end of the line at milepost 343.97, a distance of .32 miles, in North Little Rock, in Pulaski County, Ark. The line traverses United States Postal Service Zip Code 72118.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, In Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 20, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 1, 2010. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 10, 2010, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, #1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by October 26, 2010. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA, at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by October 21, 2011, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 12, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–26239 Filed 10–20–10; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Agency Information Collection; Activity Under OMB Review; Omnibus Household Survey Program

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In accordance with the requirements of section 3506(c) (2) (A) of the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) described below is being forwarded to the Office of Management and Budget (OMB) for approval for an extension of a currently approved information collection related to the use of and satisfaction with the nation's transportation system. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on

the following collection of information was published on February 2, 2010 (75 FR 5370) and the comment period ended on April 5, 2010. The 60-day notice produced no comments.

DATES: Written comments should be submitted by November 22, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Pheny Weidman, OHS Program Manager, BTS, RITA, Department of Transportation, 1200 New Jersey Ave. SE., Room E32–318, Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays. Telephone (202) 366–2817, Fax (202) 493–0568 or e-mail *pheny.weidman@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Omnibus Household Survey (OHS) Program.

Type of Request: Approval of an extension of a currently approved information collection.

OMB Control Number: 2139–0012.

Affected Public: The target population for the OHS Program is the non-institutionalized population, aged 18 and older, who live in the United States. A national probability sample of households generated using list-assisted random digit dialing (RDD) methodology will be employed by the survey. Individual survey respondents within selected households will be chosen at random.

Number of Respondents: 1,500.

Number of Responses: 1,500.

Total Annual Burden: 625 hours (Based on previous data collections, we estimate the average time to complete the survey is 25 minutes. 25 minutes × 1,500 respondents = 37,500 minutes/60 minutes = 625 hours). The estimated average time to complete the survey has increased from the 10 minutes stated for previous data collections to 25 minutes. The increase is largely due to the increase in the length of questionnaire. The survey sample size also will increase from the 1,000 respondents used by previous data collections to 1,500. The increase in sample size is due to the inclusion of questions regarding the safety of public transit. In order to ensure that there will be enough samples to produce reliable estimates for those questions, a total of 500 individuals will be oversampled from selected Metropolitan Statistical Areas that provide public transit services.

Abstract: In 2005, Congress passed, and the President signed, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU; Pub. L. 109–59). SAFETEA–LU contained a number of legislative mandates including providing data, statistics and analyses to transportation decision-makers. The Research and Innovative Technology Administration, Bureau of Transportation Statistics (RITA/BTS) was tasked to accomplish this legislative mandate under 49 U.S.C. 111 (c) (1). RITA/BTS plans to use the Omnibus Household Survey (OHS) to:

- Assess the public's evaluation of the nation's transportation system in light of the DOT's strategic goals (safety, reduced congestion, global connectivity, environmental stewardship and security, preparedness and response),
- Provide a vehicle for the operating administrations within the DOT as well as other governmental agencies, to survey the public about current transportation issues, and
- Provide national estimates of transportation mode usage.

Each version of the OHS will focus on some subset of topics taken from the list below. Topics may vary from survey to survey since covering all topics in one questionnaire would make the respondent burden unacceptable:

Choices and frequency of mode use in the month and the week prior to the survey data collection:

Commercial air;
Privately owned vehicle;
Taxi;
Rail transit (subway, streetcar, or light rail);
Commuter rail;
Transit (local) and intercity (long distance) bus;
Intercity Rail (Amtrak);
Other modes such as biking and walking.

Confidence in the safety of the following modes of transportation:

Commercial air;
Privately owned vehicle;
Taxi;
Rail transit (subway, streetcar, or light rail);
Commuter rail;
Water transportation (taxis, ferries, ships);
Transit (local) and intercity (long distance) bus;
Intercity Rail (Amtrak);
Other modes such as biking/walking/ferries.

Confidence in the security procedures for the following modes of transportation:

Commercial air;
Charter/general aviation;
Privately owned vehicle;
Rail transit (subway, streetcar, or light rail);
Commuter rail;
Water transportation (taxis, ferries, ships);
Transit (local) and intercity (long distance) bus;
Intercity Rail (Amtrak).

Assessment of/satisfaction with security procedures for the following modes of transportation:

Commercial air;
Charter/general aviation;
Rail transit (subway, streetcar, or light rail);
Commuter rail;
Water transportation (taxis, ferries, ships);
Transit (local) and intercity (long distance) bus;
Intercity Rail (Amtrak).

Processing through security at:

Commercial airports;
Train stations;
Waterway entry points for ferries, water taxis, cruises.

Knowledge of current check-in procedures at:

Commercial airports;
Train stations;
Waterway entry points for ferries, water taxis, cruises.

Knowledge of/confidence in the Alien Flight Student Program.

Experiences with transit delays related to suspicious/unattended baggage.

Willingness/tolerance of transportation security risk management procedures.

Information on journey to work:

Transportation used (single mode/multiple mode);
Time required for one-way trip;
Number of days traveled;
Assessment of congestion;
Methods for dealing with congestion;
Telecommuting information;
Commuting costs;
Availability of transportation subsidies.

Impact of congestion on commute.

Impact of on-line shopping on passenger and freight travel.

Impact of accessibility of transportation on livability of communities.

Assessment of/opinions regarding distracted driving behaviors.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the DOT; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Send comments to the Office of

Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: BTS Desk Officer.

Issued in Washington, DC on this 14th day of October, 2010.

Steven K. Smith,

Acting Director, Bureau of Transportation Statistics, Research and Innovative Technology Administration.

[FR Doc. 2010–26488 Filed 10–20–10; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Consensus Standards, Standard Practice for Inspection of Airplane Electrical Wiring Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces the availability of consensus standards and the Federal Aviation Administration (FAA) intention to accept the ASTM International's F2696–08 Standard Practice for Inspection of Airplane Electrical Wiring Systems (Standard Practice) as an acceptable means of compliance to 14 CFR part 23 sections concerning electrical wiring systems. By this notice, the FAA finds the standards to be acceptable methods and procedures for inspection of electrical wiring systems for normal, utility, acrobatic, and commuter category airplanes.

DATES: Comments must be received on or before November 22, 2010.

ADDRESSES: Comments may be mailed to: Federal Aviation Administration, Small Airplane Directorate, Continued Operational Safety, ACE–111, Attention: James Brady, Room 301, 901 Locust, Kansas City, Missouri 64106, or by e-mail to: *james.brady@faa.gov.* All comments must be marked: Consensus Standards Comments, and must specify the standard being addressed by ASTM F2696–08 Standard Practice for Inspection of Airplane Electrical Wiring Systems.

FOR FURTHER INFORMATION CONTACT: James Brady, Aerospace Engineer, Regulations and Policy Branch (ACE–111), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4132; e-mail: *james.brady@faa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces the availability of consensus standards. The FAA expects a suitable consensus standard to be reviewed at least every two years. The two-year review cycle will result in a standard revision or reapproval. A standard is issued under a fixed designation (*i.e.,* F2696–08); the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A reapproval indicates a two-year review cycle completed with no technical changes. A superscript epsilon (ε) indicates an editorial change since the last revision or reapproval. A notice of availability (NOA) will only be issued for new or revised standards. Reapproved standards issued with no technical changes or standards issued with editorial changes only (*i.e.,* superscript epsilon (ε)) are considered accepted by the FAA without need for an NOA.

Comments Invited: Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the consensus standard number and be submitted to the address specified above. All communications received on or before the closing date for comments will be forwarded to ASTM International Committee F39 for consideration. The standard may be changed in light of the comments received. The FAA will address all comments received during the recurring review of the consensus standard and will participate in the consensus standard revision process.

Background: Under the provisions of the revised Office of Management and Budget (OMB) Circular A–119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities," dated February 10, 1998, industry and the FAA have been working with ASTM International to develop consensus standards for the design, fabrication, modification, inspection, and maintenance of electrical systems installed on normal and utility category airplanes.

These consensus standards satisfy the FAA's goal for airworthiness certification and a verifiable minimum safety level for normal, utility, acrobatic, and commuter category airplanes. Instead of developing airworthiness standards through the rulemaking process, the FAA participates as a member of Committee F39 in developing these standards. The use of the consensus standard process assures government and industry discussion and agreement on appropriate standards for the required level of safety.

Consensus Standards in This Notice of Availability

The FAA has reviewed the standards presented in this NOA for compliance with the regulatory requirements of the rule. Any normal, utility, acrobatic, and commuter aircraft issued an airworthiness certificate, which has been designed, manufactured, operated, and maintained, in accordance with this and previously accepted ASTM consensus standards provides the public with the appropriate level of safety established under the regulations. The FAA maintains a listing of all accepted standards on the FAA Web site.

The FAA finds the following new consensus standards acceptable for inspection of the specified aircraft. The consensus standard listed below may be used unless the FAA publishes a specific notification otherwise.

ASTM Designation F2696–08, titled: Standard Practice for Inspection of Airplane Electrical Wiring Systems.

Availability

These consensus standards are copyrighted by ASTM International, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959. Individual reprints of this standard (single or multiple copies, or special compilations and other related technical information) may be obtained by contacting ASTM at this address, or at (610) 832–9585 (phone), (610) 832–9555 (fax), through *service@astm.org* (e-mail), or through the ASTM Web site at *http://www.astm.org.* To inquire about standard content and/or membership or about ASTM International Offices abroad, contact Daniel Schultz, Staff Manager for Committee F39 on Normal and Utility Category Airplane Electrical Wiring Systems: (610) 832–9716, *dschultz@astm.org.*

Issued in Kansas City, Missouri, on October 13, 2010.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–26537 Filed 10–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Consensus Standards, Standard Practice for Maintenance of Airplane Electrical Wiring Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces the availability of consensus standards and the Federal Aviation Administration (FAA) intention to accept the ASTM International's F2799–09 Standard Practice for Maintenance of Airplane Electrical Wiring Systems (Standard Practice) as an acceptable means of compliance to 14 CFR part 23 sections concerning electrical wiring systems. By this notice, the FAA finds the standards to be acceptable methods and procedures for maintenance of electrical wiring systems for normal, utility, acrobatic, and commuter category airplanes.

DATE: Comments must be received on or before November 22, 2010.

ADDRESSES: Comments may be mailed to: Federal Aviation Administration, Small Airplane Directorate, Continued Operational Safety, ACE–111, Attention: James Brady, Room 301, 901 Locust, Kansas City, Missouri 64106, or by e-mail to: *james.brady@faa.gov.* All comments must be marked: Consensus Standards Comments, and must specify the standard being addressed by ASTM F2799–09 Standard Practice for Maintenance of Airplane Electrical Wiring Systems.

FOR FURTHER INFORMATION CONTACT: James Brady, Aerospace Engineer, Regulations and Policy Branch (ACE–111), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4132; e-mail: *james.brady@faa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces the availability of consensus standards. The FAA expects a suitable consensus standard to be reviewed at least every two years. The two-year review cycle will result in a standard revision or reapproval. A standard is issued under a fixed designation (*i.e.,* F2799–09); the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A reapproval indicates a two-year review cycle completed with no technical changes. A superscript epsilon (ε) indicates an editorial change since the last revision or reapproval. A notice of availability (NOA) will only be issued for new or revised standards. Reapproved standards issued with no technical changes or standards issued with editorial changes only (*i.e.,* superscript epsilon (ε)) are considered accepted by the FAA without need for an NOA.

Comments Invited: Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the consensus standard number and be submitted to the address specified above. All communications received on or before the closing date for comments will be forwarded to ASTM International Committee F39 for consideration. The standard may be changed in light of the comments received. The FAA will address all comments received during the recurring review of the consensus standard and will participate in the consensus standard revision process.

Background: Under the provisions of the revised Office of Management and Budget (OMB) Circular A–119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities," dated February 10, 1998, industry and the FAA have been working with ASTM International to develop consensus standards for the design, fabrication, modification, inspection, and maintenance of electrical systems installed on normal and utility category airplanes.

These consensus standards satisfy the FAA's goal for airworthiness certification and a verifiable minimum safety level for normal, utility, acrobatic, and commuter category airplanes. Instead of developing airworthiness standards through the rulemaking process, the FAA participates as a member of Committee F39 in developing these standards. The use of the consensus standard process assures government and industry discussion and agreement on appropriate standards for the required level of safety.

Consensus Standards in This Notice of Availability

The FAA has reviewed the standards presented in this NOA for compliance with the regulatory requirements of the rule. Any normal, utility, acrobatic, and commuter aircraft issued an airworthiness certificate, which has been designed, manufactured, operated, and maintained, in accordance with this and previously accepted ASTM consensus standards provides the public with the appropriate level of safety established under the regulations. The FAA maintains a listing of all accepted standards on the FAA Web site.

The FAA finds the following new consensus standards acceptable for maintenance of the specified aircraft. The consensus standard listed below may be used unless the FAA publishes a specific notification otherwise.

ASTM Designation F2799–09, titled: Standard Practice for Maintenance of Airplane Electrical Wiring Systems.

Availability

These consensus standards are copyrighted by ASTM International, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959. Individual reprints of this standard (single or multiple copies, or special compilations and other related technical information) may be obtained by contacting ASTM at this address, or at (610) 832–9585 (phone), (610) 832–9555 (fax), through *service@astm.org* (e-mail), or through the ASTM Web site at *http://www.astm.org.* To inquire about standard content and/or membership or about ASTM International Offices abroad, contact Daniel Schultz, Staff Manager for Committee F39 on Normal and Utility Category Airplane Electrical Wiring Systems: (610) 832–9716, *dschultz@astm.org.*

Issued in Kansas City, Missouri, on October 13, 2010.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–26534 Filed 10–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans and other Federal agencies that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway interchange project, improvements along State Route 163 (SR–163) at the Friars Road Interchange in the County of San Diego, State of

California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before April 19, 2011. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then the shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Kevin Hovey, Senior Environmental Planner, Division of Environmental Analysis, California Department of Transportation, 4050 Taylor Street, San Diego, CA 92110, Regular Office Hours 7 a.m. to 3 p.m., Telephone number 619–688–0240, e-mail *Kevin.Hovey@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following project in the State of California: The project is located in the Mission Valley Community of the City of San Diego along SR–163. The proposed project will: Construct new at grade lanes on the west-side of southbound SR–163 approaching Friars Road with connection to westbound Interstate 8/ Hotel Circle North; modify the existing SR–163/Friars Road interchange partial cloverleaf, including the addition of a flyover bridge from Ulric Street to southbound SR–163; widen Friars Road bridge from 6 lanes to 10 lanes with added sidewalks on both sides of the bridge; widen the eastern portion of Friars Road past the northbound SR–163 on-ramp; widen the western portion of Frazee Road immediately north and south of Friars Road; remove the median on Avenida de las Tiendas (south of Friars Road) and restripe the roadway to provide three southbound and three northbound lanes; install or upgrade traffic signals at Friars Road/Ulric Street, Ulric Street/southbound SR–163 on-ramp; Friars Road/northbound SR–163 on-ramp; and Frazee Road/Murray Canyon Road; and construct 15 retaining walls and 9 noise attenuation barriers along SR–163 and Friars Road. The project will be constructed in three phases. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the project files. The Categorical Exclusion, approved on 09/30/2010, and other project records are available by contacting Caltrans at the addresses provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality regulations;
2. National Environmental Policy Act (NEPA);
3. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU);
4. Department of Transportation Act of 1966;
5. Federal Aid Highway Act of 1970;
6. Clean Air Act Amendments of 1990;
7. Clean Water Act of 1977 and 1987;
8. Endangered Species Act of 1973;
9. Migratory Bird Treaty Act;
10. Title VI of the Civil Rights Act of 1964;
11. Uniform Relocation Assistance and Real Property Acquisition Act of 1970;
12. National Historic Preservation Act of 1966;
13. Executive Order 11990, Protection of Wetlands;
14. Executive Order 13112, Invasive Species; and
15. Executive Order 11988, Floodplain Management.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: October 13th, 2010.

Karen Bobo,

Director, Local Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2010–26662 Filed 10–20–10; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0141; Notice 1]

Mazda North American Operations, Receipt of Petition for Decision of Inconsequential Noncompliance

Mazda North American Operations (MNAO),[1] on behalf of Mazda Motor Corporation of Hiroshima, Japan (Mazda), has determined the lens of the headlamps equipped on certain 2004 through 2009 Mazda RX–8 model passenger cars, manufactured from April 1, 2003, to May 29, 2009, and certain 2006 through 2008 MX–5 model passenger cars, built from May 17, 2005, to November 27, 2008, failed to meet the requirements of paragraph S7.2(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 108 Lamps, *Reflective Devices, and Associated Equipment.* Mazda has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports,* dated December 18, 2009.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Mazda has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Mazda's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Mazda estimates approximately 123,000 2004 through 2009 Mazda RX–8 model passenger cars, manufactured from April 1, 2003 to May 29, 2009, and 2006 through 2008 MX–5 model passenger cars, built from May 17, 2005 to November 27, 2008, are affected. All of the affected vehicles were built at Mazda's plant in Hiroshima Japan.

Paragraph 7.2(b) of FMVSS No. 108 requires:

> S7.2(b) The lens of each headlamp and of each beam contributor manufactured on or after December 1, 1989, to which paragraph (a) of this section applies shall be marked with the name and/or trademark registered with the U.S. Patent and Trademark Office of the manufacturer of such headlamp or beam contributor, or its importer, or any manufacturer of a vehicle equipped with such headlamp or beam contributor. Nothing in this paragraph shall be construed to authorize the marking of any such name and/or trademark by one who is not the owner, unless the owner has consented to it.

Mazda states that the noncompliance is that the lenses of the headlamps on the affected vehicles are not marked with the name or trademark of the manufacturer of the headlamp, the manufacturer of the vehicle, or the importer of the vehicle.

Mazda was notified by its headlamp manufacturer, Koito Manufacturing Company, Ltd. (Koito) of the apparent

[1] Mazda Motor Corporation of Hiroshima, Japan (Mazda) is the manufacturer of the subject vehicles and Mazda North American Operations (MNAO) is the importer of the vehicles as well as the registered agent for Mazda.

noncompliance. Mazda then concluded that the vehicles equipped with the affected headlamps failed to comply with paragraph S7.2(b) of FMVSS No. 108.

Mazda stated the following reasons why they believe the noncompliance is inconsequential to vehicle safety and does not present a risk to motor vehicle safety:

> The affected headlamps fulfill all the relevant performance requirements of FMVSS No. 108, except that trade name and/or trademark of the manufacturer or importer is missing on the lens. However, the affected headlamps have the trademark of the headlamp manufacturer on the rim of the headlamp housing. Thus, Mazda contends that this marking on the rim is visible with the vehicle's front hood open and states that it believes that the rim marking could assist the easy identification of the headlamp manufacturer by the users of the vehicles.
>
> Mazda has not received any complaints or claims related to the noncompliance nor is it aware of any known reports of accidents or injuries attributed to the noncompliance.

In summary, Mazda states that it believes the noncompliance is inconsequential to motor vehicle safety because the affected headlamps fulfill all other relevant requirements of FMVSS No. 108.

The company also states that it has taken steps to correct the noncompliance in future production.

Supported by the above stated reasons, Mazda believes that the subject noncompliance is inconsequential to motor vehicle safety, and that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays.

c. Electronically: By logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment Closing Date: November 22, 2010.

Authority: (49 U.S.C. 30118, 30120: Delegations of authority at CFR 1.50 and 501.8)

Issued on: October 15, 2010.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2010–26425 Filed 10–20–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0137; Notice 1]

General Motors, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

General Motors, LLC (GM),[1] has determined that certain 2008 through 2010 Model Year Chevrolet Malibu passenger cars equipped with automatic transmissions and manufactured between May 2007 through March 2010 do not fully meet the requirements of paragraph S3.1.4.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect.* GM filed an appropriate report pursuant to 49 CFR part 573 *Defect and Noncompliance Responsibility and Reports,* dated March 30, 2010.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (*see* implementing rule at 49 CFR part 556), GM has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of GM's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

A total of 462,227[2] model year 2008, 2009 and 2010 Chevrolet Malibu passenger cars manufactured during the period May 2007 through March 2010 are potentially affected by the subject noncompliance.

Paragraph S3.1.4.1 of FMVSS No. 102 requires:

> Except as specified in S3.1.4.3, if the transmission shift position sequence includes a park position, identification of shift positions, including the positions in relation to each other and the position selected, shall be displayed in view of the driver whenever any of the following conditions exist:
>
> (a) The ignition is in a position where the transmission can be shifted; or

[1] General Motors, LLC (GM) is a Michigan corporation that manufactures motor vehicles.

[2] GM's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt GM from the notification and recall responsibilities of 49 CFR part 573 for as many as 462,227 of the affected vehicles. However, the agency cannot relieve GM's distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after GM recognized that the subject noncompliance existed. Those vehicles must be brought into conformance, exported, or destroyed.

(b) The transmission is not in park.

GM described the noncompliance as the absence of the required transmission shift position display for a certain ignition key cylinder position. GM explained that while the key is in the ignition there is a narrow ignition key cylinder position between the "ACC" and "OFF" positions within which the transmission shift lever can be moved and the indicator light that illuminates the transmission shift position display is inoperative. The Company added that this noncompliance only occurs when the engine is not running.

GM additionally stated that in all other ignition activation and operation positions, all of the subject vehicles comply with paragraph S3.1.4.1 of FMVSS No. 102.

GM argued its belief that the subject noncompliance is inconsequential to motor vehicle safety because:

As NHTSA recognized in proposing the standard (49 FR 32409–32411 (August 25, 1988)), the purpose of the display requirement for PRNDM information is to "provide the driver with transmission position information for the vehicle conditions where such information can reduce the likelihood of shifting errors." Thus, in all but the rarest circumstances, the primary function of the PRNDM display is to inform the driver of gear selection and relative position of the gears while the engine is running. All of the subject vehicles display PRNDM information whenever the ignition switch is in the "On" or "Run" position.

With the exception of the absence of the required transmission shift position display for one narrow ignition key cylinder position, the system meets all other applicable requirements of FMVSS No. 102.

GM has no record of any incidents, injuries, owner complaints or field reports related to this noncompliance. GM added that if a customer reports this problem to them and requests a remedy, the Company will replace the ignition switch with a conforming component.

Since this noncompliance only occurs during an atypical operation, the noncompliance is not likely to occur under normal driving conditions. The only circumstance where the noncompliance would appear is if the ignition switch is in the intermediary position between the "OFF" and "ACC" detent positions prior to the interlock. In order for this condition to be present, a driver would have to first move the transmission control to "PARK." In such a case, there are two possible scenarios for the driver: 1) leaving the vehicle with the key in the ignition or 2) remaining in the vehicle. GM provides the following analysis for both scenarios:

1. The driver exits the vehicle while leaving the key in the ignition:

If the driver attempted to remove the key before exiting the vehicle, the key would not be capable of removal. The doors may also still be locked if they are in the factory default setting to unlock in the "PARK" position.

As required by S5.1.3 of FMVSS 114, GM provides an audible warning to the driver that activates whenever the key has been left in the ignition locking system and the driver's door is opened.

The Owner's Manual supplied with the vehicle provides specific warnings and instructions on ensuring the vehicle is in "PARK" and the key is removed before exiting the vehicle.

2. The driver remains in the vehicle:

If the driver remains in the vehicle, he or she would likely either restart the vehicle's engine or attempt to remove the key to exit the vehicle.

If the driver attempts to restart the engine, paragraph S3.1.3 of FMVSS No. 102 requires that the starter be inoperative whenever the vehicle's transmission shift position is in a forward or reverse drive position. The driver rotating the ignition switch forward attempting to start the engine will definitely activate the PRNDM display. Therefore, the PRNDM information will be available to the driver who can see that the vehicle did not start because the transmission was not in "Park" or "Neutral".

GM says that because both of these situations are addressed by FMVSS requirements, a lack of a transmission shift position display in either of these cases may constitute a minor inconvenience, but will have no consequence to safety. In addition, GM stated that NHTSA has previously granted similar petitions on 3 occasions.

Furthermore, GM also stated the following:

GM recognizes that there may be isolated non-driving situations in which a person may desire to know gear selection or the relative position of the gears with the engine off, such as when placing the vehicle in tow. However, these cases occur infrequently and do not occur during normal ignition activation and vehicle operation. If the subject condition [noncompliance] is present during these infrequent non-driving situations when PRNDM information may be desired, gear selection and relative positioning can easily be determined by rotating the ignition switch slightly clockwise past the accessory "ACC" detent to activate the shift indicator display without starting the vehicle's engine. Given the nature of these non-driving situations and since the information can be readily obtained with a slight key rotation, GM believes that the subject condition [noncompliance] will have no real or implied degradation of motor vehicle safety.

GM stated that previous rulemakings and NHTSA decisions on several previous inconsequential noncompliance petitions further support its position that the subject noncompliances are inconsequential to motor vehicle safety.

GM also indicated that it has corrected the problem that caused the subject noncompliance so that it cannot reoccur in future production.

In view of the above, GM believes that the described noncompliance is inconsequential and does not present a risk to motor vehicle safety. Thus, GM requests that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. *Electronically:* by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/*. Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the

Federal Register published on April 11, 2000 (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 22, 2010.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: October 14, 2010.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2010–26426 Filed 10–20–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2010–0202]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt thirty-nine individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective October 21, 2010. The exemptions expire on October 22, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

Background

On August 27, 2010, FMCSA published a notice of receipt of Federal diabetes exemption applications from thirty-nine individuals and requested comments from the public (75 FR 52809). The public comment period closed on September 27, 2010 and no comments were received.

FMCSA has evaluated the eligibility of the thirty-nine applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program To Qualify Individuals with Insulin-Treated Diabetes Mellitus To Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441) **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These thirty-nine applicants have had ITDM over a range of 1 to 33 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the August 27, 2010, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comment

FMCSA did not receive any comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly

monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the thirty-nine exemption applications, FMCSA exempts, Angel Bergendale, Charles K. Bond, Dennis J. Callanan, Philip F. Carpenter, Brandon M. Coleman, George B. Ferris, John B. Flood, John F. Galione, Jeffrey G. Giguere, Allen C. Hartshaw, Michael Hawkins, Timothy U. Herring, Richard L. Hines, David M. Hughes, Eugene G. Hunter, William F. Kanable, William C. Kenney, Paul D. Kimmel, Gregory L. Kuharski, Joe D. Lammey, Robert B. Langston, III, Mark W. Lavorini, Justin T. Mattice, Leldon W. McCutcheon, Ray A. May, Richard E. Moore, Robert F. Naples, Jr., Robert C. Nemeth, Mark P. Norwood, Todd H. Pack, Christopher M. Provance, Michael E. Reck, Warren A. Richter, James E. Seymour, Karl G. Skweres, Kyle N. Stach, William R. Thome, Richard T. Whitney and Allan M. Younglas from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: October 14, 2010.

Larry W. Minor,

Associate Administrator, Office of Policy and Program Development.

[FR Doc. 2010–26654 Filed 10–20–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0327]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 16 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before November 22, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2010–0327 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director,

Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." FMCSA can renew exemptions at the end of each 2-year period. The 16 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Jeisson Agudelo-Ortiz

Mr. Agudelo-Ortiz, age 31, has had a prosthetic left eye since birth. The best corrected visual acuity in his right eye is 20/20. Following an examination in

2010, his ophthalmologist noted, "I believe the patient has the ability to operate a commercial vehicle despite loss of the left eye and has done so successfully for many years." Mr. Agudelo-Ortiz reported that he has driven straight trucks for 2 years, accumulating 9,600 miles and buses for 2 years, accumulating 14,000 miles. He holds a Class C Commercial Driver's License (CDL) from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles L. Alsager, Jr.

Mr. Alsager, 47, has had retinal scarring in his left eye since 1985. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/400. Following an examination in 2010, his optometrist noted, "I certify that Charles has sufficient vision to operate a commercial vehicle, in my opinion." Mr. Alsager reported that he has driven straight trucks for 3 years, accumulating 78,000 miles and tractor-trailer combinations for 6 months, accumulating 1,500 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Eddie A. Branham

Mr. Branham, 42, has had loss of vision in his right eye since childhood. The best corrected visual acuity in his right eye is count-finger vision only, in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "He has been driving safely for many years with glasses and should continue to be able to operate a commercial vehicle safely in this manner." Mr. Branham reported that he has driven straight trucks for 14 years, accumulating 280,000 miles and tractor-trailer combinations for 14 years, accumulating 140,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charlene Brown

Ms. Brown, 47, has had amblyopia in her left eye since childhood. The best corrected visual acuity in her right eye is 20/20 and in her left eye, 20/200. Following an examination in 2010, her optometrist noted, "It is this offices finding that Charlene Brown has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Ms. Brown reported that she has driven straight trucks for 3 years, accumulating 129,000 miles. She holds a Class C operator's license from Kansas. Her driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Nathan A. Buckles

Mr. Buckles, 34, has had choreoretinal scarring in his right eye since 1998 due to trauma. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "In my opinion, Nathan has sufficient vision to perform the driving tasks required of a commercial driver." Mr. Buckles reported that he has driven straight trucks for 13 years, accumulating 25,000 miles. He holds a Class A CDL from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dale H. Dattler

Mr. Dattler, 55, has had complete loss of vision in his right eye since childhood due trauma. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2010, his ophthalmologist noted, "In my medical opinion, he has sufficient vision to perform driving tasks to operate a commercial vehicle." Mr. Dattler reported that he has driven straight trucks for 25 years, accumulating 75,000 miles, and tractor-trailer combinations for 6 years, accumulating 15,000 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Daryl Jonescheit

Mr. Jonescheit, 68, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/80 and in his left eye, 20/25. Following an examination in 2010, his optometrist noted, "There is no reason visually why Mr. Jonescheit cannot operate a commercial vehicle with his current stable ocular condition." Mr. Jonescheit reported that he has driven tractor-trailer combinations for 42 years, accumulating 5 million miles. He holds a Class A CDL from South Dakota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John N. Lanning

Mr. Lanning, 52, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/70 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "It appears that Mr. Lanning's vision would not hinder him from operating a commercial vehicle." Mr. Lanning reported that he has driven tractor-trailer combinations for 20 years, accumulating 2 million miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Cynthia K. Linson

Ms. Linson, 47, has had amblyopia in her right eye since childhood. The best corrected visual acuity in her right eye is 20/300 and in her left eye, 20/20. Following an examination in 2010, her ophthalmologist noted, "In my medical opinion she has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Ms. Linson reported that she has driven buses for 5 years, accumulating 52,000 miles. She holds a Class B CDL from Illinois. Her driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles M. McDaris

Mr. McDaris, 47, has had corneal scarring in his right eye since 1970. The best corrected visual acuity in his right eye is 20/50 only and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "In my opinion, Mr. McDaris has sufficient vision to perform the driving tasks required to operate a commercial vehicle in that his vision has remained stable at 20/50 in the right eye and 20/20 in the left eye for many years, and he has continued to function without any difficulties." Mr. McDaris reported that he has driven straight trucks for 13 years, accumulating 733,200 miles and tractor-trailer combinations for 13 years, accumulating 733,200 miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Calvin J. Schaap

Mr. Schaap, 65, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/200 only and in his left eye, 20/15. Following an examination in 2010, his optometrist noted, "In my opinion, Mr. Schaap's vision is sufficient to perform the driving tasks required to operate a commercial vehicle." Mr. Schaap reported that he has driven straight trucks for 47 years, accumulating 3.7 million miles and tractor-trailer combinations for 46 years, accumulating 460,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Frederick C. Schultz, Jr.

Mr. Schultz, 38, has had a prosthetic left eye since 1996. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2010, his ophthalmologist noted, "Mr. Schultz has sufficient vision to operate a commercial vehicle." Mr. Schultz reported that he has driven straight trucks for 16 years, accumulating 166,400 miles, tractor-trailer combinations for 15 years, accumulating 156,000 miles, and buses for 2 years, accumulating 20,000 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV.

Steve C. Sinclair

Mr. Sinclair, 60, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/200 only and in his left eye, 20/15. Following an examination in 2010, his optometrist noted, "In my opinion, Mr. Sinclair has demonstrated with his many long years of driving that his vision is sufficient to perform the driving tasks required to operate a commercial vehicle." Mr. Sinclair reported that he has driven straight trucks for 30 years, accumulating 1.5 million miles. He holds a Class C operator's license from Iowa. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV.

Eugene J. Smith, Jr.

Mr. Smith, 57, has had histoplasmosis in his left eye since 1999. The best corrected visual acuity in his right eye is 20/15 only and in his left eye, 20/150. Following an examination in 2010, his ophthalmologist noted, "The vision deficiency is stable at this time and is not expected to worsen. His right eye is entirely normal and he has 160 degrees of horizontal field in both eyes. This certifies medically that the patient has sufficient vision to perform any driving tasks and operate a commercial vehicle and should be allowed to perform these tasks." Mr. Smith reported that he has driven tractor-trailer combinations for 35 years, accumulating 5.2 million miles. He holds a Class A CDL from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Daniel M. Veselitza

Mr. Veselitza, 70, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/25 only and in his left eye, 20/80. Following an examination in 2010, his optometrist noted, "According to these guidelines his best-corrected visual acuity in the right eye is sufficient to perform driving tasks required to operate a commercial vehicle." Mr. Veselitza reported that he has driven straight trucks for 3 years, accumulating 33,000 miles. He holds a Class A CDL from Nevada. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John E. Westbrook

Mr. Westbrook, 60, has had amblyopia in his right eye since childhood and a prosthetic left eye since childhood. The best corrected visual acuity in his right eye is 20/30. Following an examination in 2010, his optometrist noted, "Patient, John Westbrook, does have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Westbrook reported that he has driven straight trucks for 15 years, accumulating 900,000 miles and tractor-trailer combinations for 10 years, accumulating 800,000 miles. He holds a Class A CDL from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business November 22, 2010. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: October 14, 2010.

Larry W. Minor,

Associate Administrator, Office of Policy and Program Development.

[FR Doc. 2010–26653 Filed 10–20–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on October 25–26, 2010, in the Chandelier Ballroom at the St. Regis Hotel, 923 16th Street, NW., Washington, DC, from 8 a.m. to 3 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other VA benefits programs. Public comments will be received at 2 p.m. each day. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Robert Watkins, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration, Compensation and Pension Service, Regulation Staff (211D), 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail at *Robert.Watkins2@va,gov*. Any member of the public wishing to attend the meeting or seeking additional information should contact Mr. Watkins at (202) 461–9214.

Dated: October 17, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–26484 Filed 10–20–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Prosthetics and Special-Disabilities Programs will be held on November 9–10, 2010, in room 730, at VA Central Office, 810 Vermont Avenue, NW., Washington, DC. The sessions will convene at 8:30 a.m. on both days, and will adjourn at 4:30 p.m. on November 9 and at 12 noon on November 10. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on VA's prosthetics programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also provides advice to the Secretary on special disabilities programs which are defined as any program administered by the Secretary to serve Veterans with spinal cord injuries, blindness or visual impairments, loss of extremities or loss of function, deafness or hearing impairment, and other serious incapacities in terms of daily life functions.

On November 9, the Committee will be briefed by the Director of Physical Medicine and Rehabilitation; Chief Consultant for Women Veterans Strategic Healthcare Group; Director of Optometry Service; and Chief Consultant for Dental Services. On November 10, the Committee will be briefed by the Chief Consultant for Prosthetics and Sensory Aids Service.

No time will be allocated for receiving oral presentations from the public. However, members of the public may direct questions or submit written statements for review by the Committee in advance of the meeting to Mr. Larry N. Long, Designated Federal Officer, Veterans Health Administration, Patient Care Services, Rehabilitation Services (117D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, or by e-mail at *lonlar@va.gov*. Any member of the public wishing to attend the meeting should contact Mr. Long at (202) 461–7354.

Dated: October 17, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–26485 Filed 10–20–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Establishment of New System of Records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e) (4)) requires that all agencies publish in the Federal Register a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled "Suicide Prevention Database-VA" (158VA11).

DATES: Comments on this new system of records must be received no later than November 22, 2010. If no public comment is received, the new system will become effective November 22, 2010.

ADDRESSES: Written comments concerning the proposed amended system of records may be submitted by: mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or e-mail to *http://www.Regulations.gov.* All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment.

FOR FURTHER INFORMATION CONTACT: Janet Kemp RN, Ph.D., Department of Veterans Affairs, 400 Fort Hill Avenue, Canandaigua, NY 14424; telephone (585) 393–7939.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Systems of Records

The Suicide Prevention Database will serve two purposes. First, the database will store records associated with the National Suicide Hotline call logs via the National Suicide Hotline Web Application Program. The National Suicide Hotline Web Application Program is an electronic call log database that stores information from a Hotline call. In addition to the ability to retrieve and view information obtained from the calls the Web Interface program performs the following functions:

1. The system accepts Hotline calls and stores them according to the following:

a. Anonymous persons with incomplete identification information;

b. All Veterans, including Veterans who are not registered in the VA health care system (non-VA);

c. From family and friends of the affected Veteran:

○ In this case, the system shall indicate that the call was not made from the affected Veteran.

2. The system provides a mechanism for Hotline staff to identify the VA Medical Center closest to the caller's physical location;

3. The system provides a means for recording Hotline referrals in the Veteran's electronic medical record when the referral is made to a VA Medical Center for follow-up care;

4. The system provides a means for Suicide Prevention Coordinators to document their follow-up measures;

5. The system provides access to call log data for reporting purposes. The data will be used to provide information related to the number of calls, caller's demographic information, the types of calls, and follow-up care.

In addition to the National Suicide Hotline call logs via the National Suicide Hotline Web Application Program, the "Suicide Prevention Database-VA" will maintain Suicide Attempts and Completions information. This information is documented using the Statistical Package for the Social Sciences (SPSS). Information collected in SPSS includes attempt or completion, military conflict, VA enrolled, gender, age, mental health diagnosis, medical diagnosis, previous attempts, month of event, method used, outcome, intent, seen at a VA within 7 days of attempt, seen at VA within 30 days of attempt, where seen, had suicide been addressed, and last recorded pain score. The data will be used to generate national reports. In addition, the information obtained will be used to develop further VA educational programs and research opportunities surrounding suicide prevention.

II. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following Routine Use disclosures of information maintained in the system:

1. The record of an individual who is covered by a system of records may be

disclosed to a Member of Congress, or a staff person acting for the Member, when the Member or staff person requests the record on behalf of and at the written request of the individual.

2. Disclosure may be made to National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under authority of Title 44, Chapter 29, of the United States Code (U.S.C). NARA and GSA are responsible for management of old records no longer actively used, but which may be appropriate for preservation, and for the physical maintenance of the Federal government's records. VA must be able to provide the records to NARA and GSA in order to determine the proper disposition of such records.

3. Disclosure may be made to other Government agencies in support of data exchanges of electronic medical record information approved by the individual.

4. VA may disclose on its own initiative any information in this system, except the names and home addresses of Veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. VA may also disclose on its own initiative the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

5. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

6. Disclosures of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform the services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement. This routine use includes disclosures by the individual or entity performing the service for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

7. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

8. VA may disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or for other functions of the Commission as authorized by law or regulation. VA must be able to provide information to the Commission to assist it in fulfilling its duties to protect employee's rights, as required by statute and regulation.

9. VA may disclose to the Fair Labor Relations Authority (FLRA) (including its General Counsel) information related to the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; to disclose information in matters properly before the Federal Services Impasse Panel, and to investigate representation petitions and conduct or supervise representation elections. VA must be able to provide information to FLRA to comply with the statutory mandate under which it operates.

10. VA may disclose information to officials of the Merit Systems Protection Board (MSPB), or the Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

11. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: September 28, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

158VA11

SYSTEM NAME:

"Suicide Prevention Database—VA".

SYSTEM LOCATION:

The "Suicide Prevention Database—VA" will be maintained at Canandaigua VA Medical Center, 400 Fort Hill Avenue, Canandaigua, NY 14424. The back-up computer tape information is stored off-site at Albany VA Medical Center.

In addition, information from these records or copies of records may be maintained at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning Veterans and friends and family of Veterans who access the National Suicide Hotline. In addition, records include the name of the Hotline call responder and the name of the Suicide Prevention Coordinator.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information related to:

1. The National Suicide Hotline call logs via the National Suicide Hotline Web Application Program includes the following information:

a. Identifies, by full name, the Hotline call responder;

b. Identifies, by full name, the Suicide Prevention Coordinator;

c. Records calls to the National Suicide Hotline which may be:

(1) Calls from an anonymous person with incomplete identification information;

(2) Calls from a Veteran, including Veterans who are not registered in VA health care system (non-VA);

(3) Calls from family and friends of the affected Veteran (In this case, the system shall indicate that the call was not made from the affected Veteran).

d. Identifies the VA Medical Center closest to the caller's physical location;

e. Records Hotline referrals in the Veteran's electronic medical record when the referral is made to a VA Medical Center for follow-up care;

f. Provides a means for Suicide Prevention Coordinators to document their follow-up measures;

g. Provides access to call log data for reporting purposes: Provides information related to the number of calls, callers demographic information, the types of calls, and follow-up care.

2. The Suicide Attempts and Completions data is collected in the SPSS statistical package. The information includes attempt or completion, military conflict, VA enrolled, gender, age, mental health diagnosis, medical diagnosis, previous attempts, month of event, method used, outcome, intent, seen at a VA within 7 days of attempt, seen at VA within 30 days of attempt, where seen, had suicide been addressed, and last recorded pain score.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, section 501.

PURPOSE(S):

The records and information may be used for ensuring appropriate follow-up care is provided to those who telephone the National Suicide Hotline. In addition, the information will be used for statistical reports for the purpose of evaluating the need for development of further suicide prevention efforts to include education and research. Additionally, the statistical reports will be used to provide information related to suicide to VA officials, congressional members, and the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information, and 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus (HIV), that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

The Suicide Prevention-VA system of record will be routinely used for the following:

1. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the Member, when the Member or staff person requests the record on behalf of and at the written request of the individual.

2. Disclosure may be made to National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under authority of Title 44, Chapter 29, of the United States Code (U.S.C.).

3. Disclosure may be made to other Government agencies in support of data exchanges of electronic medical record information approved by the individual.

4. VA may disclose on its own initiative any information in this system, except the names and home addresses of Veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. VA may also disclose on its own initiative the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

5. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

6. Disclosures of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform the services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement. This routine use includes disclosures by the individual or entity performing the service for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

7. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

8. VA may disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or for other functions of the Commission as authorized by law or regulation.

9. VA may disclose to the Fair Labor Relations Authority (FLRA) (including its General Counsel) information related to the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; to disclose information in matters properly before the Federal Services Impasse Panel, and to investigate representation petitions and conduct or supervise representation elections.

10. VA may disclose information to officials of the Merit Systems Protection Board (MSPB), or the Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

11. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on the Canandaigua VA Medical Center's secure computer server.

RETRIEVABILITY:

Records are retrieved by name, social security number or other assigned identifiers of the individuals on whom they are maintained.

SAFEGUARDS:

1. VA will maintain the data in compliance with applicable VA security policy directives that specify the standards that will be applied to protect sensitive personal information. VA's security measures complies with applicable Federal Information Processing Standards (FIPS) issued by the National Institute of Standards and Technology (NIST). Access to VA working and storage areas is restricted to VA employees on a "need-to-know" basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. They are required to take annual VA mandatory data privacy and security training. Generally, VA file areas are locked after normal duty hours and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to computer rooms at the Canandaigua VA Medical Center is limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Peripheral devices are placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information stored on the Suicide Prevention Database–VA may be accessed by authorized VA employees. Access to file information is controlled at two levels; the systems recognize authorized employees by series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties. Information that is downloaded from the Suicide Prevention Database–VA and maintained on personal computers is afforded similar storage and access protections as the data that is maintained in the original files. Access to information stored on automated storage media at other VA locations is controlled by individually unique passwords/codes.

RETENTION AND DISPOSAL:

Paper records and information are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures; VISN 2 Center of Excellence at Canandaigua VA Medical Center (528A5), 400 Fort Hill Avenue, Canandaigua, NY 14424. Officials responsible for the system of records include Craig S. Howard, Director, Canandaigua VA Medical Center; Kerry L. Knox, Ph.D., Director, VISN 2 Center of Excellence; Janet Kemp, RN, Ph.D., Associate Director Education and Training, VISN 2 Center of Excellence.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the Canandaigua VA Medical Center. Inquiries should include the person's full name, social security number, dates of employment, date(s) of contact, and return address.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the Canandaigua VA Medical Center.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by VHA employees.

[FR Doc. 2010–26489 Filed 10–20–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of amendment and republication of an existing system of records.

SUMMARY: As required by the Privacy Act of 1974 5 U.S.C. 552a(e)4, notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records in its inventory entitled "Veterans (Deceased) Headstone or Marker Records—VA" (48VA40B) as set forth in Public Law 93–43. VA is amending the system of records by revising the Purpose, Routine Uses of

Records Maintained in the System, Safeguards, Categories of Individuals Covered by the System and Notification Procedures. VA is republishing the system notice in its entirety.

DATES: Comments on this amended system of records must be received no later than November 22, 2010. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the amended system will become effective November 22, 2010.

ADDRESSES: Written comments concerning the proposed amended system of records may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment, (this is not a toll free number). In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Privacy Officer, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, or fax comments to telephone (202) 273–6699.

SUPPLEMENTARY INFORMATION: This publication is in accordance with the Privacy Act requirement that agencies publish their amended system of records in the **Federal Register** when there is revision, change, or addition. VA's National Cemetery Administration (NCA) has reviewed its systems of records notices and has determined its record system, "Veterans (Deceased) Headstone or Marker Records— VA" (48VA40B) should be amended to reflect evolving technology and procedures and to conform to current practice.

This system of records is also amended by revising the Purpose section. The Purposes section more fully explains the mission of the VA NCA Interment Records system.

The Safeguards section is being amended to list specific standards that will be applied to protect sensitive personal information.

The Notification Procedures are amended to reflect any individual who wishes to access information within the system may submit a written request to the Privacy Officer.

Routine Use of Records Maintained in the System is being amended to reflect the Departmental requirement of adding seven routine uses to further clarify appropriate and necessary disclosures. Former routine use numbers 1, 3, and 4 remain the same.

Routine use number 1 remains the same and allows for use in connection with the issuance of a government headstone or marker in a National Cemetery or a private cemetery.

Routine use number 2 is revised to better allow the disclosure by VA, on its own initiative, any information in the system, except the names and home addresses of Veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

Routine use number 3 remains the same and allows for disclosure to a foreign government allied with the U.S. during war, or a Federal, State or local agency maintaining civil, criminal or other pertinent information or military service data, if necessary to obtain information relevant to an agency decision concerning eligibility for burial or a reservation in a national cemetery or the issuance of a government headstone to mark a grave.

Routine use number 4 remains the same and allows disclosure to a Federal agency in response to its request in connection with the granting of a benefit to a veteran (including active duty personnel) or a dependent by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Routine use number 5 is revised to better allow for disclosure to a Member of Congress, or a staff person acting for the Member, when the Member or staff person requests the record on behalf of and at the written request of the individual.

Routine use number 6 is revised to better allow disclosure to the National Archives and Records Administration in records management inspections conducted under authority of Title 44 U.S.C.

Routine use number 7 is added and allows VA to disclose records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

Routine use number 8 is added and allows for the disclosure of relevant information to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

Routine use number 9 is added and allows disclosure to other Federal agencies to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

Routine use number 10 is added to allow for the appropriate mitigation of a possible data breach. This routine use permits disclosures by including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

The notice of amendment and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: September 16, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

48VA40B

SYSTEM NAME:

"Veterans (Deceased) Headstone or Marker Records—VA".

SYSTEM LOCATION:

Records are maintained at the Department of Veterans Affairs (VA) Central Office, Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Deceased Veterans and eligible family members.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the system are the primary records and may contain the following types of information:

1. Military Service Data.
2. Applicant's name and address.
3. Place of burial.
4. Data on headstone or marker.
5. Consignee's name, address and phone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 93–43.

PURPOSE:

National Cemetery Administration (NCA) collects a limited amount of personally Identifiable information in order to provide authorized individual's access to or interact with the Department of Veterans Affairs. The system enables VA to maintain lists of individuals who receive a variety of Federal Veteran's Benefits administered by VA at VA facilities located throughout the country. VA gathers or creates these records in order to enable it to administer these statutory benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system also may be disclosed as a routine use for the following purposes:

1. For use in connection with the issuance of a government headstone or marker in a National Cemetery or a private cemetery.

2. VA on its own initiative may disclose any information in the system, except the names and home addresses of Veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

3. A record from this system of records may be disclosed as a "routine use" to a foreign government allied with the U.S. during war, or a Federal, State or local agency maintaining civil, criminal or other pertinent information or military service data, if necessary to obtain information relevant to an agency decision concerning eligibility for burial or a reservation in a national cemetery or the issuance of a government headstone to mark a grave.

4. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the granting of a benefit to a Veteran (including active duty personnel) or a dependent by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

5. The record of an individual who is covered by a system of records may be disclosed to a Member of congress, or a staff person acting for the Member, when the Member or staff person requests the record on behalf of and at the written request of the individual.

6. Disclosure may be made to the National Archives and Records Administration in records management inspections conducted under authority of Title 44 U.S.C.

7. VA may disclose records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

8. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

9. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

10. VA may, on its own initiative disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information contained in the Veterans (Deceased) Headstone and Marker Records are maintained in paper documents and are stored at Veterans Administration Central Office.

RETRIEVABILITY:

Paper documents are indexed and retrievable by name of VA beneficiary or eligible family member.

SAFEGUARDS:

NCA will maintain the data in compliance with applicable VA security policy Directives that specify the standards that will be applied to protect sensitive personal information. Further, only authorized individuals may have access to the data and only when needed to perform their duties. They are required to take annual VA mandatory data privacy and security training.

RETENTION AND DISPOSAL:

Because the information is related to deceased veterans, the paper documents are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Cemetery Administration (41), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

Any individual who wishes to access information in order to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the content of such records should submit a written request to the Privacy Officer, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All inquiries must reasonably identify the type of records involved. Inquiries should include the individual's full name, branch of service, dates of service, service numbers, social security number, and date of birth.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Include family members of the deceased, official military records and VA claims records.

[FR Doc. 2010–26490 Filed 10–20–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
October 21, 2010

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutant Emissions: Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; Group I Polymers and Resins; Marine Tank Vessel Loading Operations; Pharmaceuticals Production; The Printing and Publishing Industry; and Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2010–0600; FRL–9203–7]

RIN 2060–AO91

National Emission Standards for Hazardous Air Pollutant Emissions: Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; Group I Polymers and Resins; Marine Tank Vessel Loading Operations; Pharmaceuticals Production; The Printing and Publishing Industry; and Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; and supplemental notice of proposed rulemaking.

SUMMARY: This action proposes how EPA will address the residual risk and technology reviews conducted for two national emission standards for hazardous air pollutants (NESHAP), and this action is a supplemental notice of proposed rulemaking for an October 2008 action that proposed how EPA would address the residual risk and technology reviews for four NESHAP. The six NESHAP include 16 source categories, 12 of which are the subject of residual risk and technology reviews in this package. This action proposes to modify the existing emissions standards for eight source categories in three of the six NESHAP to address certain emission sources not currently regulated under these standards. It also proposes for all six NESHAP to address provisions related to emissions during periods of startup, shutdown, and malfunction. Finally, this action proposes changes to two of the six NESHAP to correct editorial errors, make clarifications, or address issues with implementation or determining compliance.

DATES: *Comments.* Comments must be received on or before December 6, 2010. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before November 22, 2010.

Public Hearing. We will hold a public hearing on November 5, 2010. Persons requesting to speak at the public hearing must contact EPA by November 1, 2010.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0600, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.* Attention Docket ID No. EPA–HQ–OAR–2010–0600.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2010–0600.
- *Mail:* U.S. Postal Service, send comments to: EPA Docket Center, EPA West (Air Docket), Attention Docket ID No. EPA–HQ–OAR–2010–0600, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. Attention Docket ID No. EPA–HQ–OAR–2010–0600. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0600. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2010–0600. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Public Hearing. We will hold a public hearing concerning this proposed rule on November 5, 2010, from 9 a.m. to 7 p.m. Persons interested in presenting oral testimony at the hearing should contact Ms. Mary Tom Kissell, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number, (919) 541–4516, by November 1, 2010. The public hearing will be held at the U.S. Environmental Protection Agency—Research Triangle Park Campus, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709. If no one requests to speak at the public hearing by November 1, 2010, then the public hearing will be cancelled and a notification of cancellation posted on the following Web site: *http://www.epa.gov/ttn/oarpg/t3main.html.*

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Ms. Mary Tom Kissell, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–

4516; fax number: (919) 541–0246; and e-mail address: *kissell.mary@epa.gov.* For specific information regarding the risk modeling methodology, contact Ms. Elaine Manning, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–5499; fax number: (919) 541–0840; and e-mail address: *manning.elaine@epa.gov.* For information about the applicability of these six NESHAP to a particular entity, contact the appropriate person listed in Table 1 to this preamble.

SUPPLEMENTARY INFORMATION:

TABLE 1—LIST OF EPA CONTACTS FOR THE NESHAP ADDRESSED IN THIS PROPOSED ACTION

NESHAP for:	OECA contact [1]	OAQPS contact [2]
Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.	Scott Throwe, (202) 564–7013, *throwe.scott@epa.gov*.	Phil Mulrine, (919) 541–5289, *mulrine.phil@epa.gov*.
Group I Polymers and Resins Production	Scott Throwe, (202) 564–7013, *throwe.scott@epa.gov*.	Randy McDonald, (919) 541–5402, *mcdonald.randy@epa.gov*.
Marine Vessel Loading Operations	Maria Malave, (202) 564–7027, *malave.maria@epa.gov*.	Steve Shedd, (919) 541–5397, *shedd.steve@epa.gov*.
Pharmaceuticals Production	Marcia Mia, (202) 564–7042, *mia.marcia@epa.gov*.	Randy McDonald, (919) 541–5402, *mcdonald.randy@epa.gov*.
Printing and Publishing Industry	Len Lazarus, (202) 564–6369, *lazarus.leonard@epa.gov*.	David Salman, (919) 541–0859, *salman.dave@epa.gov*.
Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants.	Maria Malave, (202) 564–7027, *malave.maria@epa.gov*.	Phil Mulrine, (919) 541–5289, *mulrine.phil@epa.gov*.

[1] OECA stands for EPA's Office of Enforcement and Compliance Assurance.
[2] OAQPS stands for EPA's Office of Air Quality Planning and Standards.

I. Preamble Acronyms and Abbreviations

Several acronyms and terms used to describe industrial processes, data inventories, and risk modeling are included in this preamble. While this may not be an exhaustive list, to ease the reading of this preamble and for reference purposes, the following terms and acronyms are defined here:

AERMOD—The air dispersion model used by the HEM–3 model
AEGL—Acute Exposure Guideline Levels
ANPRM—Advance Notice of Proposed Rulemaking
ASTM—An international standards organization that develops and publishes voluntary consensus technical standards
ATCM—Airborne Toxics Control Measure
ATSDR—Agency for Toxic Substances and Disease Registry
BACT—Best Available Control Technology
bbl/yr—Barrels per Year
BID—Background Information Document
CalEPA—California Environmental Protection Agency
CARB—California Air Resources Board
CAA—Clean Air Act
CBI—Confidential Business Information
CEEL—Community Emergency Exposure Levels
CIIT—Chemical Industry Institute of Toxicology
CFR—Code of Federal Regulations
CMP—Composite Mesh Pad
CO—Carbon Monoxide
CO_2—Carbon Dioxide
D/F—Dioxin/Furan
EED—Emission Elimination Device
EPA—Environmental Protection Agency
EPS—Eco Pickled Surface
ERPG—Emergency Response Planning Guidelines
HAP—Hazardous Air Pollutants
HCl—Hydrochloric Acid
HI—Hazard Index
HEM–3—Human Exposure Model version 3
HEPA—High Efficiency Particulate Air
HON—Hazardous Organic National Emissions Standards for Hazardous Air Pollutants
HQ—Hazard Quotient
ICR—Information Collection Request
IRIS—Integrated Risk Information System
Km—Kilometer
LAER—Lowest Achievable Emission Rate
MACT—Maximum Achievable Control Technology
MACT Code—A code within the NEI used to identify processes included in a source category
mg/dscm—Milligrams per Dry Standard Cubic Meter
MIR—Maximum Individual Risk
MTVLO—Marine Tank Vessel Loading Operations
NAC/AEGL Committee—National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances
NAICS—North American Industry Classification System
NAS—National Academy of Sciences
NATA—National Air Toxics Assessment
NESHAP—National Emissions Standards for Hazardous Air Pollutants
NEI—National Emissions Inventory
NO_X—Nitrogen Oxide
NRC—National Research Council
NSR—New Source Review
NTTAA—National Technology Transfer and Advancement Act
OECA—Office of Enforcement and Compliance Assurance
OLD—Organic Liquids Distribution
OMB—Office of Management and Budget
PB–HAP—Hazardous air pollutants known to be persistent and bio-accumulative in the environment
PFC—Perfluorinated Chemical
PFOS—Perfluorooctyl Sulfonate
PM—Particulate Matter
POM—Polycyclic Organic Matter
RACT—Reasonably Available Control Technology
RBLC—RACT/BACT/LAER Clearinghouse
REL—CalEPA Chronic Reference Exposure Level
RFA—Regulatory Flexibility Act
RfC—Reference Concentration
RfD—Reference Dose
RTR—Residual Risk and Technology Review
SAB—Science Advisory Board
SCC—Source Classification Codes
SCS—Smooth Clean Surface
SF3—2000 Census of Population and Housing Summary File 3
SO_2—Sulfur Dioxide
SOP—Standard Operating Procedures
SSM—Startup, Shutdown, and Malfunction
TOSHI—Target Organ-Specific Hazard Index
TPY—Tons Per Year
TRIM—Total Risk Integrated Modeling System
TTN—Technology Transfer Network
UF—Uncertainty Factor
UMRA—Unfunded Mandates Reform Act
URE—Unit Risk Estimate
VOC—Volatile Organic Compounds
WAFS—Wetting Agent/Fume Suppressant
WCSC—Waterborne Commerce Statistics Center
WWW—Worldwide Web

II. General Information

A. Does this action apply to me?

The regulated industrial source categories that are the subject of this proposal are listed in Table 2 to this preamble. Table 2 is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the proposed action for the source categories listed. These standards, and any changes considered in this rulemaking, would be directly applicable to sources as a Federal program. Thus, Federal, State, local, and tribal government entities are not affected by this proposed action. The

regulated categories affected by this proposed action include:

TABLE 2—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

NESHAP and source category		NAICS code [1]	MACT code [2]
Chromium Electroplating	Chromium Anodizing Tanks	332813	1607
	Decorative Chromium Electroplating	332813	1610
	Hard Chromium Electroplating	332813	1615
Group I Polymers and Resins	Butyl Rubber Production	325212	1307
	Epichlorohydrin Elastomers Production	325212	1311
	Ethylene Propylene Rubber Production	325212	1313
	Hypalon™ Production [3]	325212	1315
	Neoprene Production	325212	1320
	Nitrile Butadiene Rubber Production	325212	1321
	Polybutadiene Rubber Production	325212	1325
	Polysulfide Rubber Production [3]	325212	1332
	Styrene Butadiene Rubber and Latex Production	325212	1339
Marine Vessel Loading Operations		4883	0603
Pharmaceuticals Production		3254	1201
Printing and Publishing Industry		32311	0714
Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants		3311, 3312	0310

[1] North American Industry Classification System.
[2] Maximum Achievable Control Technology.
[3] There are no longer any operating facilities in either the Hypalon™ or Polysulfide Rubber source categories. Therefore, this proposal does not address these source categories.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this proposal will also be available on the World Wide Web (WWW) through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* The TTN provides information and technology exchange in various areas of air pollution control.

Additional information is available on the residual risk and technology review (RTR) Web page at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* This information includes source category descriptions and detailed emissions and other data that were used as inputs to the risk assessments.

C. What should I consider as I prepare my comments for EPA?

Submitting CBI. Do not submit information containing CBI to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit a CD–ROM or disk that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2010–0600.

D. How is this document organized?

The information in this preamble is organized as follows:

III. Background

A. What is the statutory authority for this action?

Section 112 of the Clean Air Act (CAA) establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, after EPA has identified categories of sources emitting one or more of the HAP listed in section 112(b) of the CAA, section 112(d) of the CAA calls for us to promulgate NESHAP for those sources. "Major sources" are those that emit or have the potential to emit any single HAP at a rate of 10 tons per year (TPY) or more of a single HAP or 25 TPY or more of any combination of HAP. For major sources, these technology-based standards must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

MACT standards are to reflect application of measures, processes, methods, systems, or techniques, including, but not limited to, measures which, (A) reduce the volume of or eliminate pollutants through process changes, substitution of materials or other modifications, (B) enclose systems or processes to eliminate emissions, (C) capture or treat pollutants when released from a process, stack, storage, or fugitive emissions point, (D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification), or (E) are a combination of the above. CAA section 112(d)(2)(A)–(E). The MACT standard may take the form of a design, equipment, work practice, or operational standard where EPA first determines either that (A) a pollutant cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant, or that any requirement for or use of such a conveyance would be inconsistent with law, or (B) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations. CAA sections 112(h)(1)–(2).

The MACT "floor" is the minimum control level allowed for MACT standards promulgated under CAA section 112(d)(3), and may not be based on cost considerations. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT floors for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

The EPA is then required to review these technology-based standards and to revise them "as necessary (taking into account developments in practices, processes, and control technologies)" no less frequently than every 8 years, under CAA section 112(d)(6). In conducting this review, EPA is not obliged to completely recalculate the prior MACT determination. *NRDC* v. *EPA,* 529 F.3d 1077, 1084 (District of Columbia Circuit, 2008).

The second stage in standard-setting focuses on reducing any remaining "residual" risk according to CAA section 112(f). This provision requires, first, that EPA prepare a Report to Congress discussing (among other things) methods of calculating risk posed (or potentially posed) by sources after implementation of the MACT standards, the public health significance of those risks, the means and costs of controlling them, the actual health effects to persons in proximity of emitting sources, and the recommendations regarding legislation of such remaining risk. EPA prepared and submitted this report (*Residual Risk Report to Congress,* EPA–453/R–99–001) in March 1999. Congress did not act in response to the report, thereby triggering EPA's obligation under CAA section 112(f)(2) to analyze and address residual risk.

CAA section 112(f)(2) requires us to determine for source categories subject to certain MACT standards, whether the emissions standards provide an ample margin of safety to protect public health. If the MACT standards for HAP "classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than 1-in-1 million," EPA must promulgate residual risk standards for the source category (or subcategory) as necessary to provide an ample margin of safety to protect public health. In doing so, EPA may adopt standards equal to existing MACT standards if EPA determines that the existing standards are sufficiently protective. *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (District of Columbia Circuit, 2008). ("If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.") EPA must also adopt more stringent standards, if necessary, to prevent an adverse environmental effect,[1] but must consider cost, energy, safety, and other relevant factors in doing so.

Section 112(f)(2) of the CAA expressly preserves our use of a two-step process for developing standards to address any residual risk and our interpretation of "ample margin of safety" developed in the National Emission Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants (Benzene NESHAP) (54 FR 38044, September 14, 1989). The

[1] "Adverse environmental effect" is defined in CAA section 112(a)(7) as any significant and widespread adverse effect, which may be reasonably anticipated to wildlife, aquatic life, or natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental qualities over broad areas.

first step in this process is the determination of acceptable risk. The second step provides for an ample margin of safety to protect public health, which is the level at which the standards are set (unless a more stringent standard is required to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect).

The terms "individual most exposed," "acceptable level," and "ample margin of safety" are not specifically defined in the CAA. However, CAA section 112(f)(2)(B) preserves the interpretation set out in the Benzene NESHAP, and the United States Court of Appeals for the District of Columbia Circuit in *NRDC* v. *EPA,* 529 F.3d 1077, concluded that EPA's interpretation of section 112(f)(2) is a reasonable one. See *NRDC* v. *EPA,* 529 F.3d at 1083 (District of Columbia Circuit, "[S]ubsection 112(f)(2)(B) expressly incorporates EPA's interpretation of the Clean Air Act from the Benzene standard, complete with a citation to the Federal Register"). (District of Columbia Circuit 2008). See also, *A Legislative History of the Clean Air Act Amendments of 1990,* volume 1, p. 877 (Senate debate on Conference Report). We notified Congress in the *Residual Risk Report to Congress* that we intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11).

In the Benzene NESHAP, we stated as an overall objective:

> * * * in protecting public health with an ample margin of safety, we strive to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1-in-1 million; and (2) limiting to no higher than approximately 1-in-10 thousand [*i.e.,* 100-in-1 million] the estimated risk that a person living near a facility would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

The Agency also stated that, "The EPA also considers incidence (the number of persons estimated to suffer cancer or other serious health effects as a result of exposure to a pollutant) to be an important measure of the health risk to the exposed population. Incidence measures the extent of health risk to the exposed population as a whole, by providing an estimate of the occurrence of cancer or other serious health effects in the exposed population." The Agency went on to conclude that "estimated incidence would be weighed along with other health risk information in judging acceptability." As explained more fully in our *Residual Risk Report to Congress,* EPA does not define "rigid line[s] of acceptability," but considers rather broad objectives to be weighed with a series of other health measures and factors (EPA–453/R–99–001, p. ES–11). The determination of what represents an "acceptable" risk is based on a judgment of "what risks are acceptable in the world in which we live" (*Residual Risk Report to Congress,* p. 178, quoting the Vinyl Chloride decision at 824 F.2d 1165) recognizing that our world is not risk-free.

In the Benzene NESHAP, we stated that "EPA will generally presume that if the risk to [the maximum exposed] individual is no higher than approximately 1-in-10 thousand, that risk level is considered acceptable." 54 FR 38045. We discussed the maximum individual lifetime cancer risk as being "the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years." *Id.* We explained that this measure of risk "is an estimate of the upper bound of risk based on conservative assumptions, such as continuous exposure for 24 hours per day for 70 years." *Id.* We acknowledge that maximum individual lifetime cancer risk "does not necessarily reflect the true risk, but displays a conservative risk level which is an upper-bound that is unlikely to be exceeded." *Id.*

Understanding that there are both benefits and limitations to using maximum individual lifetime cancer risk as a metric for determining acceptability, we acknowledged in the 1989 Benzene NESHAP that "consideration of maximum individual risk * * * must take into account the strengths and weaknesses of this measure of risk." *Id.* Consequently, the presumptive risk level of 100-in-1 million (1-in-10 thousand) provides a benchmark for judging the acceptability of maximum individual lifetime cancer risk, but does not constitute a rigid line for making that determination.

The Agency also explained in the 1989 Benzene NESHAP the following: "In establishing a presumption for MIR [maximum individual cancer risk], rather than a rigid line for acceptability, the Agency intends to weigh it with a series of other health measures and factors. These include the overall incidence of cancer or other serious health effects within the exposed population, the numbers of persons exposed within each individual lifetime risk range and associated incidence within, typically, a 50-kilometer (km) exposure radius around facilities, the science policy assumptions and estimation uncertainties associated with the risk measures, weight of the scientific evidence for human health effects, other quantified or unquantified health effects, effects due to co-location of facilities, and co-emission of pollutants." *Id.*

In some cases, these health measures and factors taken together may provide a more realistic description of the magnitude of risk in the exposed population than that provided by maximum individual lifetime cancer risk alone. As explained in the Benzene NESHAP, "[e]ven though the risks judged "acceptable" by EPA in the first step of the Vinyl Chloride inquiry are already low, the second step of the inquiry, determining an "ample margin of safety," again includes consideration of all of the health factors, and whether to reduce the risks even further." In the ample margin of safety decision process, the Agency again considers all of the health risks and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors. Considering all of these factors, the Agency will establish the standard at a level that provides an ample margin of safety to protect the public health, as required by CAA section 112(f). 54 FR 38046.

B. How did we consider the risk results in making decisions for this proposal?

As discussed in section III.A. of this preamble, we apply a two-step process for developing standards to address residual risk. In the first step, EPA determines if risks are acceptable. This determination "considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR) [2] of approximately 1-in-10 thousand [*i.e.,* 100-in-1 million]." 54 FR 38045. In the second step of the process, EPA sets the standard at a level that provides an ample margin of safety "in consideration of all health information, including the number of persons at risk levels higher than approximately 1-in-1 million, as well as other relevant factors, including costs and economic impacts, technological

[2] Although defined as "maximum individual risk," MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk were an individual exposed to the maximum level of a pollutant for a lifetime.

feasibility, and other factors relevant to each particular decision." *Id.*

In past residual risk determinations, EPA presented a number of human health risk metrics associated with emissions from the category under review, including: The MIR; the numbers of persons in various risk ranges; cancer incidence; the maximum non-cancer hazard index (HI); and the maximum acute non-cancer hazard. In estimating risks, EPA considered source categories under review that are located near each other and that affect the same population. EPA provided estimates of the expected difference in actual emissions from the source category under review and emissions allowed pursuant to the source category MACT standard. EPA also discussed and considered risk estimation uncertainties. EPA is providing this same type of information in support of these actions.

However, in contrast to past determinations, this notice presents and considers additional measures of health information to support our decision-making. These are discussed in more detail in later sections of this notice, and include:

- Estimates of "total facility" cancer and non-cancer risk (risk from all HAP emissions from the facility at which the source category is located).
- Demographic analyses (analyses of the distributions of HAP-related cancer risks and non-cancer risks, across different social, demographic, and economic groups within the populations living near the facilities where these source categories are located).
- Additional estimates of the risks associated with emissions allowed by the MACT standard.

The Agency is considering all of this available health information to inform our determinations of risk acceptability and ample margin of safety under CAA section 112(f). Specifically, as explained in the Benzene NESHAP, "the first step judgment on acceptability cannot be reduced to any single factor," and, thus, "[t]he Administrator believes that the acceptability of risk under section 112 is best judged on the basis of a broad set of health risk measures and information." 54 FR 38044 and 38046, September 14, 1989. Similarly, with regard to making the ample margin of safety determination, the Benzene NESHAP state that "[I]n the ample margin decision, the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors." *Id.*

The Agency acknowledges that the Benzene NESHAP provide flexibility regarding what factors the EPA might consider in making our determinations and how they might be weighed for each source category. In responding to comment on our policy under the Benzene NESHAP, EPA explained that: "The policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of non-cancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the Vinyl Chloride mandate that the Administrator ascertain an acceptable level of risk to the public by employing [her] expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and, thereby, implicitly permits consideration of any and all measures of health risk which the Administrator, in [her] judgment, believes are appropriate to determining what will 'protect the public health.'" 54 FR 38057.

For example, the level of the MIR is only one factor to be weighed in determining acceptability of risks. The Benzene NESHAP explain "an MIR of approximately 1-in-10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors." *Id.* at 38045. Similarly, with regard to the ample margin of safety analysis, the Benzene NESHAP state that: "* * * EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category." *Id.* at 38061.

EPA wishes to point out that certain health information has not been considered in these decisions. In assessing risks to populations in the vicinity of the facilities in each category, we present estimates of risk associated with HAP emissions from the source category alone (source category risk estimates) and HAP emissions from the entire facilities at which the covered source categories are located (facility-wide risk estimates). We have not presented estimates of total HAP inhalation risks from all sources in the vicinity of the covered sources (*i.e.,* the sum of risks from ambient levels, emissions from the source category, facility-wide emissions, and emissions from other facilities nearby).

The Agency understands the potential importance of considering an individual's total exposure to HAP in addition to considering exposure to HAP emissions from the source category and facility. This is particularly important when assessing non-cancer risks, where pollutant-specific exposure levels (*e.g.,* Reference Concentration (RfC)) are based on the assumption that thresholds exist for adverse health effects. For example, the Agency recognizes that, although exposures attributable to emissions from a source category or facility alone may not indicate the potential for increased risk of adverse non-cancer health effects in a population, the exposures resulting from emissions from the facility in combination with emissions from all of the other sources (*e.g.,* other facilities) to which an individual is exposed may be sufficient to result in increased risk of adverse non-cancer health effects. In May 2010, the EPA Science Advisory Board (SAB) advised us "* * * that RTR assessments will be most useful to decision makers and communities if results are presented in the broader context of aggregate and cumulative risks, including background concentrations and contributions from other sources in the area." [3]

While we are interested in placing source category and facility-wide HAP risks in the context of total HAP risks from all sources combined in the vicinity of each source, we are concerned about the uncertainties of doing so. At this point, we believe that such estimates of total HAP risks will

[3] EPA's responses to this and all other key recommendations of the SAB's advisory on RTR risk assessment methodologies (which is available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf*) are outlined in a memo to this rulemaking docket from David Guinnup entitled, *EPA's Actions in Response to the Key Recommendations of the SAB Review of RTR Risk Assessment Methodologies.*

have significantly greater associated uncertainties than for the source category or facility-wide estimates, hence, compounding the uncertainty in any such comparison. This is because we have not conducted a detailed technical review of HAP emissions data for source categories and facilities that have not previously undergone an RTR review or are not currently undergoing such review. We are requesting comment on whether and how best to estimate and evaluate total HAP exposure in our assessments, and, in particular, on whether and how it might be appropriate to use information from EPA's National Air Toxics Assessment (NATA) to support such estimates. We are also seeking comment on how best to consider various types and scales of risk estimates when making our acceptability and ample margin of safety determinations under CAA section 112(f). Additionally, we are seeking recommendations for any other comparative measures that may be useful in the assessment of the distribution of HAP risks across potentially affected demographic groups.

C. What other actions are we addressing in this proposal?

In this proposal, we are addressing three additional types of action for some or all of these six MACT standards. For eight source categories subject to three of the MACT standards, we identified significant emission sources within the categories for which standards were not previously developed. We are proposing MACT standards for these emission sources pursuant to CAA section 112(d)(2) and (3). For four source categories subject to two of the MACT standards, we are also proposing changes to correct editorial errors, to make clarifications, and to address issues with implementation or determining compliance. We are also proposing to revise requirements in each of the six MACT standards related to emissions during periods of startup, shutdown, and malfunction (SSM).

The United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. *Sierra Club* v. *EPA,* 551 F.3d 1019 (District of Columbia Circuit, 2008), *cert. denied, 130 S. Ct. 1735 (U.S. 2010).* Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and (h)(1), that is part of a regulation, commonly referred to as the *General Provisions Rule,* that EPA promulgated under section 112 of the CAA. When incorporated into a CAA section 112(d) standard for a specific source category, these two provisions exempt sources within that source category from the requirement to comply with the otherwise applicable emission standard during periods of SSM. We are proposing to eliminate the SSM exemption in each of the six MACT standards addressed in this proposal. Consistent with *Sierra Club* v. *EPA,* we are proposing that the established standards in these rules apply at all times. We are also proposing to revise the *General Provisions* table in each of the six MACT standards in several respects. For example, we are removing the *General Provisions'* requirement that the source develop an SSM plan. We are also removing certain recordkeeping and reporting requirements related to the SSM exemption, but we are retaining the recordkeeping and related requirements for malfunctions and request public comment on the requirements. EPA has attempted to ensure that regulatory language relating to the SSM exemption has been removed. We solicit comment on whether we have overlooked any regulatory provisions that might be inappropriate, unnecessary, or redundant based on our proposal to remove the exemption from compliance with the emission limit during periods of SSM.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. In contrast, malfunction is defined as a "sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner * * *" (40 CFR 63.2). EPA believes that a malfunction should not be viewed as a distinct operating mode, and, therefore, any emissions that occur during malfunctions do not need to be factored into development of CAA section 112(d) standards, which, once promulgated, apply at all times. In Mossville *Environmental Action Now* v. *EPA,* 370 F.3d 1232, 1242 (District of Columbia Circuit 2004), the Court upheld as reasonable standards that had factored in variability of emissions under all operating conditions. However, nothing in CAA section 112(d) or in case law requires that EPA anticipate and account for the innumerable types of potential malfunction events in setting emission standards. See, *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (District of Columbia Circuit 1978) ("In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication, or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.") Further, it is reasonable to interpret CAA section 112(d) as not requiring EPA to account for malfunctions in setting emissions standards. For example, we note that CAA section 112 uses the concept of "best performing" sources in defining MACT, the level of stringency that major source standards must meet. Applying the concept of "best performing" to a source that is malfunctioning presents significant difficulties. The goal of best performing sources is to operate in such a way as to avoid malfunctions of their units.

Moreover, even if malfunctions were considered a distinct operating mode, we believe it would be impracticable to take malfunctions into account in setting CAA section 112(d) standards. As noted above, by definition, malfunctions are sudden and unexpected events, and it would be difficult to set a standard that takes into account the myriad different types of malfunctions that can occur across all sources in each source category. Malfunctions can also vary in frequency, degree, and duration, further complicating standard setting.

Under this proposal, in the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, "sudden, infrequent, not reasonably preventable" and was not instead "caused in part by poor maintenance or careless operation." 40 CRF 63.2 (definition of malfunction).

Finally, EPA recognizes that, even equipment that is properly designed and maintained can sometimes fail, and that such failure can sometimes cause or contribute to an exceedance of the relevant emission standard. *(See, e.g., State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown* (September 20, 1999); *Policy on Excess*

Emissions During Startup, Shutdown, Maintenance, and Malfunctions (February 15, 1983)). Therefore, consistent with our recently promulgated final amendments to regulations addressing the Portland Cement category (75 FR 54970, September 9, 2010), we are proposing to add regulatory language providing an affirmative defense against civil penalties for exceedances of emission limits that are caused by malfunctions in each of the six MACT standards addressed in this proposal. We are proposing to define "affirmative defense" to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding. We are also proposing regulatory provisions to specify the elements that are necessary to establish this affirmative defense. *(See* 40 CFR 22.24). The proposed criteria would ensure that the affirmative defense is available only where the event that causes an exceedance of the emission limit meets the narrow definition of malfunction in 40 CFR 63.2 (sudden, infrequent, not reasonably preventable, and not caused by poor maintenance and/or careless operation). The proposed criteria also are designed to ensure that steps are taken to correct the malfunction, to minimize emissions, and to prevent future malfunctions. In any judicial or administrative proceeding, the Administrator would be able to challenge the assertion of the affirmative defense and, if the respondent has not met its burden of proving all of the requirements in the affirmative defense, appropriate penalties could be assessed in accordance with section 113 of the CAA (see also 40 CFR 22.77).

D. What specific RTR actions have previously been taken for these source categories?

For some of the 16 source categories covered by these six MACT standards, we have previously taken certain actions under the RTR program. Following is a summary of these previous actions and also a summary of additional reviews we have subsequently conducted for each source category.

1. Categories for Which RTR Decisions Have Been Finalized

There are nine source categories regulated under the Group I Polymers and Resins MACT standard. For four of these source categories (Butyl Rubber Production, Ethylene Propylene Rubber Production, Neoprene Production, and Polysulfide Rubber Production), we previously proposed and promulgated a decision not to revise the standards for purposes of the RTR provisions in CAA sections 112(d)(6) and (f)(2).[4] See 72 FR 70543, December 12, 2007 (proposed rule), and 73 FR 76220, December 16, 2008 (final rule). These four categories were determined to be "low-risk," as the maximum lifetime individual cancer risks were less than 1-in-1-million, and there were no other health concerns of significance. Therefore, we determined that conducting additional risk analyses for these categories was not warranted. We are not re-opening the RTR in this notice for these four source categories, and do not seek additional comments on that prior RTR.

However, for three of these four Group I Polymers and Resins source categories (Butyl Rubber Production, Ethylene Propylene Rubber Production, and Neoprene Production), we have identified significant emission sources for which MACT standards were not previously developed. In this proposal, we are proposing MACT standards for these emission sources, and we are also proposing that the residual risks after implementation of these new MACT standards will not change our previous finding that these source categories present low risks and that our obligation to review the residual risk under CAA section 112(f) has also been satisfied.

2. Categories for Which RTR Decisions Have Been Proposed, but Not Promulgated

For eight source categories covered under four of the MACT standards addressed in this proposal, we previously performed an RTR review and proposed that no revisions of the MACT standards were necessary to address residual risk and that it was not necessary to revise the existing standards under CAA section 112(d)(6). See 73 FR 60423, October 10, 2008. The MACT standards addressed in this proposal included Marine Tank Vessel Loading Operations (MTVLO), Printing and Publishing Industry, Pharmaceuticals Production, and five of the source categories covered under Group I Polymers and Resins (Epichlorohydrin Elastomers, Hypalon™ Production, Nitrile Butadiene Rubber Production, Polybutadiene Rubber Production, and Styrene Butadiene Rubber and Latex Production).[5] Comments were received on that proposal, but no final action has been taken. This proposal presents additional analyses we have performed since the proposal, for each of these source categories with regard to the RTR. In addition, we are proposing revisions to the SSM provisions in the existing standards for these source categories, and, for several of the source categories, we are proposing MACT standards under CAA sections 112(d)(2) and (3) for emission points that were not previously regulated.

3. Categories for Which RTR Decisions Have Not Been Proposed

We have not previously proposed any RTR actions for the four source categories (Hard and Decorative Chromium Electroplating, Chromium Anodizing Tanks, and Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants) covered by the Chromium Electroplating and Steel Pickling MACT standards. Therefore, this is our initial proposed action for these two MACT standards to address the RTR requirement. In addition, we identified significant advances in the housekeeping requirements in the chromium source categories for which we are proposing MACT standards. We are also proposing revisions to the provisions addressing SSM to ensure they are consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F.3d 1019, and we are proposing changes to correct editorial errors, make clarifications, or address issues with implementation or determining compliance.

IV. Analyses Performed

As discussed above, in this notice, we are taking the following actions: (1) We are newly proposing action or supplementing our previous proposal to address the RTR requirements of CAA sections 112(d)(6) and (f)(2) for 16 source categories covered by six different MACT standards; (2) for eight of the source categories, we are proposing MACT standards for significant emission sources that are not currently subject to emission standards under the MACT standards; (3) we are proposing to revise the provisions in each of these six MACT standards to address SSM to ensure that the SSM provisions are consistent with the Court

[4] There are no longer any operating facilities in the United States that produce polysulfide rubber, and we do not anticipate any will begin to operate in the future.

[5] The Mineral Wool Production source category was also addressed in that same October 2008 proposal. We are not proposing any additional action for that source category in this proposal, but will do so in a separate future action. We note that there are no longer any operating facilities in the United States that produce Hypalon™, and we do not anticipate that any will begin operation in the future.

decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019; and (4) for two of the MACT standards, we are proposing amendments to correct editorial errors, to make clarifications, and to address issues with implementation or determining compliance.

A. How did we estimate risk posed by the source categories?

To support the proposed decision under the RTR for each source category, EPA conducted risk assessments that provided estimates of the MIR posed by the HAP emissions from each source in a category and by each source category, the distribution of cancer risks within the exposed populations, cancer incidence, HI for chronic exposures to HAP with non-cancer health effects, hazard quotients (HQ) for acute exposures to HAP with non-cancer health effects, and an evaluation of the potential for adverse environmental effects. The risk assessments consisted of seven primary steps, as discussed below.

The docket for this rulemaking contains the following documents which provide more information on the risk assessment inputs and models, *Draft Residual Risk Assessment for 9 Source Categories, Draft Residual Risk Assessment for Steel Pickling,* and *Draft Residual Risk Assessment for Chromium Electroplating,* as well as the memoranda for the Printing and Publishing Industry, MTVLO, Epichlorohydrin Elastomers Production, Polybutadiene Rubber Production, Styrene Butadiene Rubber Production, Nitrile Butadiene Production, and Pharmaceuticals Production source categories.

1. Establishing the Nature and Magnitude of Actual Emissions and Identifying the Emissions Release Characteristics

For the source categories included in the October 10, 2008, proposal, we compiled preliminary data sets using readily-available information, reviewed the data, and made changes where necessary, and shared these data with the public via an Advanced Notice of Proposed Rulemaking (ANPRM). 72 FR 29287, March 29, 2007. The data sets were then updated based on comments received on the ANPRM and, in some cases, with additional information gathered by EPA. For the five Group I Polymers and Resins I Production source categories included in the October 2008 proposal (Epichlorohydrin Elastomers Production, Hypalon™ Production, Nitrile Butadiene Rubber Production, Polybutadiene Rubber Production, and Styrene Butadiene Rubber and Latex Production), the preliminary data sets were based on information we collected directly from industry on emissions data and emissions release characteristics. For the MTVLO, Pharmaceuticals Production, and the Printing and Publishing Industry source categories, we created the preliminary data sets using data in the 2002 National Emissions Inventory (NEI) Final Inventory, Version 1 (made publicly available on February 26, 2006), supplemented by data collected directly from industry when available. The NEI is a database that contains information about sources that emit criteria air pollutants and their precursors, and HAP. The database includes estimates of annual air pollutant emissions from point, nonpoint, and mobile sources in the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. The EPA collects this information and releases an updated version of the NEI database every 3 years.

In the March 29, 2007, ANPRM, we specifically requested comment on, and updates to, these preliminary data sets. We received comments on emissions data and emissions release characteristics data for facilities in these source categories. These comments were reviewed, considered, and the emissions information was adjusted where we concluded the comments supported such adjustment. After incorporation of changes to the data sets from this public data review process, data sets were created that were used to conduct the risk assessments and other analyses that formed the basis for the proposed actions included in the October 10, 2008, proposal.

Since the proposal, we have continued to scrutinize the data sets for these source categories and to review additional data that has become available since the October 10, 2008, proposal. For the Printing and Publishing Industry source category, we became aware that some facilities had closed. We also reviewed the emissions data and had questions about the emissions of certain HAP. After contact with industry, it was determined that those emissions did not occur from those facilities. We updated the Printing and Publishing Industry data set to reflect these changes in operating facilities and emissions. For the MTVLO data set, we had concerns that several emission points in our existing data set were mislabeled, and, thus, we extracted more recent data from the NEI. For this source category, the data set is based on the 2005 NEI. For the Pharmaceuticals Production source category data set, no changes are necessary to the data set used for the proposal. For the Polymers and Resins I MACT standard source categories included in the October 10, 2008, proposal, updates have been made based on information received in response to an industry information collection survey. Documentation for industry contacts, surveys, and other information gathered to support these changes is available in the docket for this action.

For the four source categories not included in the December 10, 2008, proposal, we compiled preliminary data sets using the best available information, reviewed the data, and made changes where necessary. For the three Chromium Electroplating MACT standard source categories (Chromium Anodizing Tanks, Decorative Chromium Electroplating, and Hard Chromium Electroplating) and the Steel Pickling source category, we compiled the preliminary data sets using data in the 2005 NEI. Then, for the Steel Pickling source category, seven facilities were contacted to verify their emissions and emissions release characteristic data, and we updated the data set based on the information collected. This updated data set was used to conduct the risk assessments and other analyses that form the bases for the proposed actions.

For the Chromium Electroplating source categories, a review of the 2005 NEI data indicated that not all chromium electroplating facilities were included in the data set. To develop an emissions inventory for the entire industry that could be used for modeling, an additional data set was developed based on facilities with known addresses—a total of 1,629 facilities compared to 122 facilities in the NEI. Emissions for each type of plant were estimated based on the model plants developed for the original Chromium Electroplating MACT standard,[6] with hard chromium model plants having the highest emissions, followed by decorative chromium electroplating, and then chromium anodizing. If the type of electroplating performed at a specific plant was unknown, we assumed these facilities were hard chrome electroplating when we estimated emissions and risks for those facilities. Although we knew that, by doing so, we would be overestimating emissions of chromium, and, therefore, also of risk, we made this conservative assumption because we did not have complete information, and we chose to overestimate to preserve an

[6] *See* EPA–HQ–OAR–2010–0600, *Model Plant Data Used to Estimate Risk from Chromium Electroplating Sources.*

ample margin of safety in the risk assessment upon which our risk modeling would be based. This analysis and a supplemental assessment are fully described in section V.A.

2. Establishing the Relationship Between Actual Emissions and MACT-Allowable Emissions Levels

The available emissions data in the NEI and from other sources typically represent the mass of emissions actually emitted during the specified annual time period. These "actual" emission levels are often lower than the level of emissions that a facility might be allowed to emit and still comply with the MACT standard. The emissions level allowed to be emitted by the MACT standard is referred to as the "MACT-allowable" emissions level. This represents the highest emission level that could be emitted by the facility without violating the MACT standard.

We discussed the use of both MACT-allowable and actual emissions in the final Coke Oven Batteries residual risk rule (70 FR 19998–19999, April 15, 2005) and in the proposed and final Hazardous Organic NESHAP (HON) residual risk rules (71 FR 34428, June 14, 2006, and 71 FR 76609, December 21, 2006, respectively). In those previous actions, we noted that assessing the risks at the MACT-allowable level is inherently reasonable since these risks reflect the maximum level sources could emit and still comply with national emission standards. But we also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP. (54 FR 38044, September 14, 1989.) It is reasonable to consider actual emissions because sources typically seek to perform better than required by emission standards to provide an operational cushion to accommodate the variability in manufacturing processes and control device performance.

As described above, the actual emissions data were compiled based on the NEI, information gathered from facilities and States, and information received in response to the ANPRM for several of the source categories. To estimate emissions at the MACT-allowable level, we developed a ratio of MACT-allowable to actual emissions for each emissions source type in each source category, based on the level of control required by the MACT standard compared to the level of reported actual emissions and available information on the level of control achieved by the emissions controls in use. For example, if there was information to suggest several facilities in a source category were controlling storage tank emissions by 98 percent while the MACT standards required only 92-percent control, we would estimate that MACT-allowable emissions from these emission points could be as much as four times higher (8-percent allowable emissions compared with 2-percent actually emitted), and the ratio of MACT-allowable to actual would be 4:1 for this emission point type at the facilities in this source category. After developing these ratios for each emission point type in each source category, we next applied these ratios on a facility-by-facility basis to the maximum chronic risk values from the inhalation risk assessment to obtain facility-specific maximum risk values based on MACT-allowable emissions.

3. Conducting Dispersion Modeling, Determining Inhalation Exposures, and Estimating Individual and Population Inhalation Risks

Both long-term and short-term inhalation exposure concentrations and health risks from each of the source categories addressed in this proposal were estimated using the Human Exposure Model (Community and Sector HEM–3 version 1.1.0). The HEM–3 performs three of the primary risk assessment activities listed above: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term and short-term inhalation exposures to individuals residing within 50 km of the modeled sources, and (3) estimating individual and population-level inhalation risks using the exposure estimates and quantitative dose-response information.

The dispersion model used by HEM–3 is AERMOD, which is one of EPA's preferred models for assessing pollutant concentrations from industrial facilities.[7] To perform the dispersion modeling and to develop the preliminary risk estimates, HEM–3 draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes 1 year of hourly surface and upper air observations for 130 meteorological stations, selected to provide coverage of the United States and Puerto Rico. A second library of United States Census Bureau census block[8] internal point locations and populations provides the basis of human exposure calculations (Census, 2000). In addition, the census library includes the elevation and controlling hill height for each census block, which are also used in dispersion calculations. A third library of pollutant unit risk factors and other health benchmarks is used to estimate health risks. These risk factors and health benchmarks are the latest values recommended by EPA for HAP and other toxic air pollutants. These values are available at *http://www.epa.gov/ttn/atw/toxsource/summary.html* and are discussed in more detail later in this section.

In developing the risk assessment for chronic exposures, we used the estimated annual average ambient air concentration of each of the HAP emitted by each source for which we have emissions data in the source category. The air concentrations at each nearby census block centroid were used as a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. We calculated the MIR for each facility as the cancer risk associated with a lifetime (70-year period) of exposure to the maximum concentration at the centroid of an inhabited census block. Individual cancer risks were calculated as the lifetime exposure to the ambient concentration of each of the HAP multiplied by its Unit Risk Estimate (URE), which is an upper bound estimate of an individual's probability of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per cubic meter of air. For residual risk assessments, we generally use URE values from EPA's Integrated Risk Information System (IRIS).[9] For carcinogenic pollutants without EPA IRIS values, we look to other reputable sources of cancer dose-response values, often using California Environmental Protection Agency (CalEPA) URE values, where available. In cases where new, scientifically credible dose response values have been developed in a manner consistent with EPA guidelines and have undergone a peer review process similar to that used by EPA, we may use such dose-response values in place of, or in addition to, other values.

[7] U.S. EPA. Revision to the *Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions* (70 FR 68218, November 9, 2005).

[8] A census block is generally the smallest geographic area for which census statistics are tabulated.

[9] The IRIS information is available at *http://www.epa.gov/IRIS.*

We note here that several carcinogens have a mutagenic mode of action.[10] For these compounds, the age-dependent adjustment factors described in EPA's *Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens*[11] were applied. This adjustment has the effect of increasing the estimated lifetime risks for these pollutants by a factor of 1.6.[12] In addition, although only a small fraction of the total polycyclic organic matter (POM) emissions were reported as individual compounds, EPA expresses carcinogenic potency for compounds in this group in terms of benzo[a]pyrene equivalence, based on evidence that carcinogenic POM have the same mutagenic mechanism of action as does benzo[a]pyrene. For this reason, EPA's Science Policy Council[13] recommends applying the *Supplemental Guidance* to all carcinogenic polycyclic aromatic hydrocarbons for which risk estimates are based on relative potency. Accordingly, we have applied the *Supplemental Guidance* to all unspeciated POM mixtures.

Incremental individual lifetime cancer risks associated with emissions from the source category were estimated as the sum of the risks for each of the carcinogenic HAP (including those classified as carcinogenic to humans, likely to be carcinogenic to humans, and suggestive evidence of carcinogenic potential[14]) emitted by the modeled source. Cancer incidence and the distribution of individual cancer risks for the population within 50 km of any source were also estimated for the source category as part of these assessments by summing individual risks. A distance of 50 km is consistent with both the analysis supporting the 1989 Benzene NESHAP (54 FR 38044) and the limitations of Gaussian dispersion modeling.

To assess risk of non-cancer health effects from chronic exposures, we summed the HQ for each of the HAP that affects a common target organ system to obtain the HI for that target organ system (or target organ-specific HI, TOSHI). The HQ is the estimated exposure divided by the chronic reference level, which is either the U.S. EPA RfC, defined as "an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime," or, in cases where an RfC is not available, the CalEPA Chronic Reference Exposure Level (REL), defined as "the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration." As noted above, in cases where new, scientifically credible dose-response values have been developed in a manner consistent with EPA guidelines and have undergone a peer review process similar to that used by EPA, we may use those dose-response values in place of, or in addition to, other values.

Screening estimates of acute exposures and risks were also evaluated for each of the HAP at the point of highest off-site exposure for each facility (*i.e.,* not just the census block centroids) assuming that a person is located at this spot at a time when both the peak (hourly) emission rate and hourly dispersion conditions (1991 calendar year data) occur. In each case, acute HQ values were calculated using best available, short-term health threshold values. These acute threshold values include REL, Acute Exposure Guideline Levels (AEGL), and Emergency Response Planning Guidelines (ERPG) for 1-hour exposure durations. As discussed below, we used conservative assumptions for emission rates, meteorology, and exposure location for our acute analysis.

As described in the CalEPA's *Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I, The Determination of Acute Reference Exposure Levels for Airborne Toxicants,* an acute REL value (*http://www.oehha.ca.gov/air/pdf/acuterel.pdf)* is defined as "the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration is termed the REL. REL values are based on the most sensitive, relevant, adverse health effect reported in the medical and toxicological literature. REL values are designed to protect the most sensitive individuals in the population by the inclusion of margins of safety. Since margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL value does not automatically indicate an adverse health impact."

AEGL values were derived in response to recommendations from the National Research Council (NRC). As described in "Standing Operating Procedures (SOP) of the National Advisory Committee on Acute Exposure Guideline Levels for Hazardous Substances" (*http://www.epa.gov/opptintr/aegl/pubs/sop.pdf*),[15] "the NRC's previous name for acute exposure levels—community emergency exposure levels (CEEL)— was replaced by the term AEGL to reflect the broad application of these values to planning, response, and prevention in the community, the workplace, transportation, the military, and the remediation of Superfund sites." This document also states that AEGL values "represent threshold exposure limits for the general public and are applicable to emergency exposures ranging from 10 minutes to 8 hours." The document lays out the purpose and objectives of AEGL by stating (page 21) that "the primary purpose of the AEGL program and the NAC/AEGL Committee is to develop guideline levels for once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals." In detailing the intended application of AEGL values, the document states (page 31) that "[i]t is anticipated that the AEGL values will be used for regulatory and nonregulatory purposes by United States Federal and State agencies, and possibly the international community in conjunction with chemical emergency response, planning, and prevention programs. More specifically, the AEGL values will be used for conducting various risk assessments to aid in the development of emergency preparedness and prevention plans, as well as real-time emergency response actions, for accidental chemical releases at fixed facilities and from transport carriers."

[10] U.S. EPA, 2006. Performing risk assessments that include carcinogens described in the *Supplemental Guidance* as having a mutagenic mode of action. *Science Policy Council Cancer Guidelines Implementation Workgroup Communication II:* Memo from W.H. Farland dated June 14, 2006. *http://epa.gov/osa/spc/pdfs/CGIWGCommunication_II.pdf.*

[11] U.S. EPA, 2005. *Supplemental Guidance for Assessing Early-Life Exposure to Carcinogens.* EPA/630/R–03/003F. *http://www.epa.gov/ttn/atw/childrens_supplement_final.pdf.*

[12] Only one of these mutagenic compounds, benzo[a]pyrene, is emitted by any of the sources covered by this proposal.

[13] U.S. EPA, 2005. *Science Policy Council Cancer Guidelines Implementation Workgroup Communication I:* Memo from W.H. Farland dated October 4, 2005, to Science Policy Council. *http://www.epa.gov/osa/spc/pdfs/canguid1.pdf.*

[14] These classifications also coincide with the terms "known carcinogen, probable carcinogen, and possible carcinogen," respectively, which are the terms advocated in the EPA's previous *Guidelines for Carcinogen Risk Assessment,* published in 1986 (51 FR 33992, September 24, 1986). Summing the risks of these individual compounds to obtain the cumulative cancer risks is an approach that was recommended by the EPA's SAB in their 2002 peer review of EPA's NATA entitled, *NATA—Evaluating the National-scale Air Toxics Assessment 1996 Data—an SAB Advisory,* available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/$File/ecadv02001.pdf.*

[15] NAS, 2001. *Standing Operating Procedures for Developing Acute Exposure Levels for Hazardous Chemicals,* page 2.

The AEGL–1 value is then specifically defined as "the airborne concentration of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure." The document also notes (page 3) that, "Airborne concentrations below AEGL–1 represent exposure levels that can produce mild and progressively increasing but transient and nondisabling odor, taste, and sensory irritation or certain asymptomatic, nonsensory effects." Similarly, the document defines AEGL–2 values as "the airborne concentration (expressed as ppm or mg/m^3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape."

ERPG values are derived for use in emergency response, as described in the American Industrial Hygiene Association's document entitled, *Emergency Response Planning Guidelines (ERPG) Procedures and Responsibilities* (*http://www.aiha.org/1documents/committees/ERPSOPs2006.pdf*), which states that, "Emergency Response Planning Guidelines were developed for emergency planning and are intended as health-based guideline concentrations for single exposures to chemicals." [16] The ERPG–1 value is defined as "the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor." Similarly, the ERPG–2 value is defined as "the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action."

As can be seen from the definitions above, the AEGL and ERPG values include the similarly-defined severity levels 1 and 2. For many chemicals, a severity level 1 value AEGL or ERPG has not been developed; in these instances, higher severity level AEGL–2 or ERPG–2 values are compared to our modeled exposure levels to screen for potential acute concerns.

Acute REL values for 1-hour exposure durations are typically lower than their corresponding AEGL–1 and ERPG–1 values. Even though their definitions are slightly different, AEGL–1 values are often the same as the corresponding ERPG–1 values, and AEGL–2 values are often equal to ERPG–2 values. Maximum HQ values from our acute screening risk assessments typically result when basing them on the acute REL value for a particular pollutant. In cases where our maximum acute HQ value exceeds 1, we also report the HQ value based on the next highest acute threshold (usually the AEGL–1 and/or the ERPG–1 value).

To develop screening estimates of acute exposures, we developed estimates of maximum hourly emission rates by multiplying the average actual annual hourly emission rates by a factor to cover routinely variable emissions. We chose the factor to use based on process knowledge and engineering judgment and with awareness of a Texas study of short-term emissions variability, which showed that most peak emission events, in a heavily-industrialized 4-county area (Harris, Galveston, Chambers, and Brazoria Counties, Texas), were less than twice the annual average hourly emission rate, and the highest peak emission event was 8.5 times the annual average hourly emission rate.[17] This analysis is provided in Appendix 4 of the *Draft Residual Risk Assessment for Source Categories Report* and is available in the docket for this action. Considering this analysis, unless specific process knowledge provided an alternate value, a conservative screening multiplication factor of 10 was applied to the average annual hourly emission rate in these acute exposure screening assessments.

In cases where all acute HQ values from the screening step were less than or equal to 1, acute impacts were deemed negligible and no further analysis was performed. In the cases where an acute HQ from the screening step was greater than 1, additional site-specific data were considered to develop a more refined estimate of the potential for acute impacts of concern. The data refinements considered included using a peak-to-mean hourly emissions ratio based on source category-specific knowledge or data (rather than the default factor of 10) and using the site-specific facility layout to distinguish facility property from an area where the public could be exposed. Ideally, we would prefer to have continuous measurements over time to see how the emissions vary by each hour over an entire year. Having a frequency distribution of hourly emission rates over a year would allow us to perform a probabilistic analysis to estimate potential threshold exceedances and their frequency of occurrence. Such an evaluation could include a more complete statistical treatment of the key parameters and elements adopted in this screening analysis. However, we recognize that having this level of data is rare, hence our use of the multiplier approach.

4. Conducting Multipathway Exposure and Risk Modeling

The potential for significant human health risks due to exposures via routes other than inhalation (*i.e.,* multipathway exposures) and the potential for adverse environmental impacts were evaluated in a three-step process. In the first step, we determined whether any facilities emitted any HAP known to be persistent and bio-accumulative in the environment (PB–HAP). There are 14 PB–HAP compounds or compound classes identified for this screening in EPA's Air Toxics Risk Assessment Library (available at *http://www.epa.gov/ttn/fera/risk_atra_vol1.html*). They are cadmium compounds, chlordane, chlorinated dibenzodioxins and furans, dichlorodiphenyldichloroethylene, heptachlor, hexachlorobenzene, hexachlorocyclohexane, lead compounds, mercury compounds, methoxychlor, polychlorinated biphenyls, POM, toxaphene, and trifluralin.

In the second step of the screening process, we determined whether the facility-specific emission rates of each of the emitted PB–HAP were large enough to create the potential for significant non-inhalation risks. To facilitate this step, we have developed emission rate thresholds for each PB–HAP using a hypothetical screening exposure scenario developed for use in conjunction with the TRIM.FaTE model. The hypothetical screening scenario was subjected to a sensitivity analysis to ensure that its key design parameters were established such that environmental media concentrations were not underestimated (*i.e.,* to minimize the occurrence of false negatives, or results that suggest that risks might be acceptable when, in fact, actual risks are high), and to also minimize the occurrence of false positives for human health endpoints.

[16] *ERP Committee Procedures and Responsibilities.* 1 November 2006. American Industrial Hygiene Association.

[17] *See http://www.tceq.state.tx.us/compliance/field_ops/eer/index.html* or docket to access the source of these data.

We call this application of the TRIM.FaTE model TRIM–Screen. The facility-specific emission rates of each of the PB–HAP in each source category were compared to the emission threshold values for each of the PB–HAP identified in the source category data sets.

For all of the facilities in the source categories addressed in this proposal, all of the PB–HAP emission rates were less than the emission threshold values. As a result of this, multi-pathway exposures and environmental risks were deemed negligible and no further analysis was performed. If the emission rates of the PB–HAP had been above the emission threshold values, the source categories would have been further evaluated for potential non-inhalation risks and adverse environmental effects in a third step through site-specific refined assessments using EPA's TRIM.FaTE model.

For further information on the multi-pathway analysis approach, see the residual risk documentation as referenced in section IV.A of this preamble.

5. Assessing Risks Considering Emissions Control Options

In addition to assessing baseline inhalation risks and screening for potential multi-pathway risks, for some source categories, where appropriate, we also estimated risks considering the potential emission reductions that would be achieved by the particular control options under consideration. The inhalation and multi-pathway risks estimated, as described above, at the actual and MACT-allowable levels represent the actual and maximum allowable operating conditions of the facilities in the source categories analyzed. For source categories where emission reduction options were available, we estimated risk based on the expected emissions reductions that would be realized with those additional emissions controls. In these cases, the expected emissions reductions were applied to the specific HAP and emissions sources in the source category data set. The results of the risk analyses considering the application of emissions controls are included in the residual risk documentation as referenced in section IV.A of this preamble, which is available in the docket for this action.

6. Conducting Other Risk-Related Analyses, Including Facility-Wide Assessments and Demographic Analyses

a. Facility-Wide Risk

To put the source category risks in context, we also examined the risks from the entire "facility," where the facility includes all HAP-emitting operations within a contiguous area and under common control. In other words, for each facility that includes one or more sources from one of the source categories under review, we examined the HAP emissions not only from the source category of interest, but also emissions of HAP from all other emission sources at the facility. The emissions data for generating these "facility-wide" risks were obtained from the 2005 NEI (available at *http://www.epa.gov/chief/net/2005inventory.html*). We analyzed risks due to the inhalation of HAP that are emitted "facility-wide" for the populations residing within 50 km of each facility, consistent with the methods used for the source category analysis described above. For these facility-wide risk analyses, the modeled source category risks were compared to the facility-wide risks to determine the portion of facility-wide risks that could be attributed to each of the six source categories being addressed in this proposal, we specifically examined the facility that was associated with the highest estimate of risk and determined the percentage of that risk attributable to the source category of interest. The risk documentation available through the docket for this action provides all the facility-wide risks and the percentage of source category contribution for all source categories assessed.

The methodology and the results of the facility-wide analyses for each source category are included in the residual risk documentation as referenced in section IV.A of this preamble, which is available in the docket for this action.

b. Demographic Analysis

To examine the potential for any environmental justice issues that might be associated with each source category, we evaluated the distributions of HAP-related cancer and non-cancer risks across different social, demographic, and economic groups within the populations living near the facilities where these source categories are located. The development of demographic analyses to inform the consideration of environmental justice issues in EPA rulemakings is an evolving science. The EPA offers the demographic analyses in this rulemaking as examples of how such analyses might be developed to inform such consideration, and invites public comment on the approaches used and the interpretations made from the results, with the hope that this will support the refinement and improve utility of such analyses for future rulemakings.

For this analysis, we analyzed risks due to the inhalation of HAP in two separate ways. In the first approach, we focus the analysis on the total populations residing within 5 km of each facility (source category and facility-wide), regardless of their estimated risks, and examine the distributions of estimated risk across the various demographic groups within those 5 km circles. The distance of 5 km was chosen for the first approach to be consistent with previous demographic analyses performed at EPA, such as the one which was performed in support of the recent proposal for the Boilers NESHAP. In the second approach, we focus the analysis only on the populations within 5 km [18] of any facility estimated to have exposures to HAP which result in cancer risks of 1-in-1 million or greater or non-cancer hazard indices of 1 or greater (based on the emissions of the source category or the facility, respectively). Once again, we examine the distributions of those risks across various demographic groups. In each approach, we compare the percentages of particular demographic groups to the total number of people in those demographic groups nationwide. In this preamble, we only present the results of the second approach since it focuses on the significant risks from either the source category or the facility-wide emissions. The results of both approaches including other risk metrics such as average risks for the exposed populations are documented in source category-specific technical reports in the docket for each of the source categories covered in this proposal.[19]

The basis for the risk values used in these analyses were the modeling results obtained from the HEM–3 model described above. The risk values for each census block were linked to a database of information from the 2000 Decennial census that includes data on race and ethnicity, age distributions, poverty status, household incomes, and education level. The Census Department Landview ® database was the source of the data on race and ethnicity, and the

[18] Generally, we have found that using a 5 km radius in the analysis will capture more than 90 percent of all the individuals with cancer risks above 1-in-1 million. In the future, we plan to extend these analyses to cover the entire modeled domain for a facility (50 km radius) to capture all individuals with risks above 1-in-1 million from the affected facilities.

[19] For example, the report pertaining to the Hard Chromium Electroplating source category is entitled *Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Hard Chromium Electroplating Facilities.*

data on age distributions, poverty status, household incomes, and education level was obtained from the 2000 Census of Population and Housing Summary File 3 (SF3) Long Form. While race and ethnicity census data are available at the block group level, the age and income census data are only available at the census block level (which includes an average of 26 blocks or an average of 1,350 people). Where census data are available at the block group level but not the block level, we assumed that all blocks within the block group have the same distribution of ages and incomes as the block group.

For each source category, the analysis results include the distribution of estimated lifetime inhalation cancer and chronic non-cancer risks for different racial and ethnic groups, different age groups, adults with and without a high school diploma, people living in households below the national median income, and for people living below the poverty line among the population living near these facilities. The specific census population categories studied include:

- Total population.
- White.
- African American (or Black).
- Native Americans.
- Other races and multiracial.
- Hispanic or Latino.
- Children 18 years of age and under.
- Adults 19 to 64 years of age.
- Adults 65 years of age and over.
- Adults without a high school diploma.
- Households earning under the national median income.
- People living below the poverty line.

It should be noted that these categories overlap in some instances, resulting in some populations being counted in more than one category (*e.g.,* other races and multiracial and Hispanic). In addition, while not a specific census population category, we also examined risks to the category "Minorities," which is defined as all race population categories except white. Since these demographic analysis methods are still evolving, EPA specifically solicits comment on the inclusion of other demographic categories (*e.g.,* "Hispanic and Non-white") in our future analyses.

For further information about risks to the populations local to the facilities in these source categories, we also evaluated the estimated distribution of inhalation cancer and chronic non-cancer risks associated with the HAP emissions from all the emissions sources at the facility (*i.e.,* facility-wide). This analysis used the facility-wide RTR modeling results and the census data described above.

The methodology and the results of the demographic analyses for each source category are included in the residual risk documentation as referenced in section IV.A of this preamble, which is available in the docket for this action.

7. Considering Uncertainties in Risk Assessment

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for the source categories addressed in this proposal. Although uncertainty exists, we believe the approach that we took, which used conservative tools and assumptions, ensures that our decisions are health-protective. A brief discussion of the uncertainties in the emissions data sets, dispersion modeling, inhalation exposure estimates, and dose-response relationships follows below. A more thorough discussion of these uncertainties is included in the *Draft Residual Risk Assessment for the Steel Pickling Source Category* (July 2010), *Draft Residual Risk Assessment for the Chromium Electroplating Source Category* (July 2010), *Draft Residual Risk Assessment for 9 Source Categories* (August 2008), and the *Risk and Technology Review (RTR) Assessment Plan* (November 2006), each of which are available in the docket for this action.

a. Uncertainties in the Emissions Data Sets

Although the development of the RTR data sets involved quality assurance/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data is incomplete or missing, the degree to which assumptions made to complete the data sets are inaccurate, errors in estimating emissions values, and other factors. The emission values considered in this analysis generally are annual totals that do not reflect short-term fluctuations during the course of a year or variations from year to year. In contrast, the estimates of peak hourly emission rates for the acute effects screening assessment were based on multiplication factors applied to the average annual hourly emission rates (the default factor is 10), which are intended to account for emission fluctuations due to normal facility operations. In some cases, more refined estimates were used for source categories where the screening estimates did not "screen out" all sources and more specific information was available. Additionally, for some source categories our estimate of the number of facilities may not represent the number of facilities that we have in our notice of proposed rulemaking data set. There is also significant uncertainty for some source categories in the identification of sources as major or area in the NEI.

b. Uncertainties in Dispersion Modeling

While the analysis employed EPA's recommended regulatory dispersion model, AERMOD, we recognize that there is uncertainty in ambient concentration estimates associated with any model, including AERMOD. Where possible, model options (*e.g.,* rural/urban, plume depletion, chemistry) were selected to provide an overestimate of ambient air concentrations of the HAP. However, because of practicality and data limitation reasons, some factors (*e.g.,* meteorology, building downwash) have the potential in some situations to overestimate or underestimate ambient impacts. For example, meteorological data were taken from a single year (1991), and facility locations can be a significant distance from the site where these data were taken. Despite these uncertainties, we believe that at off-site locations and census block centroids, the approach considered in the dispersion modeling analysis should generally yield overestimates of ambient HAP concentrations.

c. Uncertainties in Inhalation Exposure

The effects of human mobility on exposures were not included in the assessment. Specifically, short-term mobility and long-term mobility between census blocks in the modeling domain were not considered.[20] As a result, this simplification will likely bias the assessment toward overestimating the highest exposures. In addition, the assessment predicted the chronic exposures at the centroid of each populated census block as surrogates for the exposure concentrations for all people living in that block. Using the census block centroid to predict chronic exposures tends to over-predict exposures for people in the census block who live further from the facility and under-predict exposures for people in the census block who live closer to the facility. Thus, using the census block centroid to predict chronic exposures may lead to a potential understatement or overstatement of the true maximum

[20] Short-term mobility is movement from one microenvironment to another over the course of hours or days. Long-term mobility is movement from one residence to another over the course of a lifetime.

impact, but is an unbiased estimate of average risk and incidence.

The assessments evaluate the cancer inhalation risks associated with pollutant exposures over a 70-year period, which is the assumed lifetime of an individual. In reality, both the length of time that modeled emissions sources at facilities actually operate (*i.e.,* more or less than 70 years), and the domestic growth or decline of the modeled industry (*i.e.,* the increase or decrease in the number or size of United States facilities), will influence the risks posed by a given source category. Depending on the characteristics of the industry, these factors will likely result in an overestimate (or possibly an underestimate in the extreme case where a facility maintains or increases its emission levels beyond 70 years and residents live beyond 70 years at the same location) both in individual risk levels and in the total estimated number of cancer cases. Annual cancer incidence estimates from exposures to emissions from these sources would not be affected by uncertainty in the length of time emissions sources operate.

The exposure estimates used in these analyses assume chronic exposures to ambient levels of pollutants. Because most people spend the majority of their time indoors, actual exposures may not be as high, depending on the characteristics of the pollutants modeled. For many HAP, indoor levels are roughly equivalent to ambient levels, but for very reactive pollutants or larger particles, these levels are typically lower. This factor has the potential to result in an overstatement of 25 to 30 percent of exposures.[21]

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that should be highlighted. The accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of independent factors that may vary greatly, such as hourly emissions rates, meteorology, and human activity patterns. In this assessment, we assume that individuals remain for 1 hour at the point of maximum ambient concentration as determined by the co-occurrence of peak emissions and worst-case meteorological conditions. These assumptions would tend to overestimate actual exposures since it is unlikely that a person would be located at the point of maximum exposure during the time of worst-case impact.

[21] U.S. EPA. *National-Scale Air Toxics Assessment for 1996.* (EPA 453/R–01–003; January 2001; page 85.)

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the reference values used in our risk assessments for cancer effects from chronic exposures and non-cancer effects from both chronic and acute exposures. Some uncertainties may be considered quantitatively, and others generally are expressed in qualitative terms. We note as a preface to this discussion a point on dose-response uncertainty that is brought out in EPA's *2005 Cancer Guidelines;* namely, that "the primary goal of EPA actions is protection of human health; accordingly, as an Agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective." (*EPA 2005 Cancer Guidelines,* pages 1–7.) This is the approach followed here as summarized in the next several paragraphs. A complete detailed discussion of uncertainties and variabilities in dose-response relationships is given in the residual risk documentation as referenced in section IV.A of this preamble, which is available in the docket for this action.

Cancer URE values used in our risk assessments are those that have been developed to generally provide an upper bound estimate of risk. That is, they represent a "plausible upper limit to the true value of a quantity" (although this is usually not a true statistical confidence limit).[22] In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could also be greater.[23] When developing an upper bound estimate of risk and to provide risk values that do not underestimate risk, health-protective default approaches are generally used. To err on the side of ensuring adequate health-protection, EPA typically uses the upper bound estimates rather than lower bound or central tendency estimates in our risk assessments, an approach that may have limitations for other uses (*e.g.,* priority-setting or expected benefits analysis).

Chronic non-cancer reference (RfC and RfD) values represent chronic exposure levels that are intended to be health-protective levels. Specifically, these values provide an estimate (with uncertainty spanning perhaps an order of magnitude) of daily oral exposure (RfD) or of a continuous inhalation exposure (RfC) to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. To derive values that are intended to be "without appreciable risk," the methodology relies upon an uncertainty factor (UF) approach (U.S. EPA, 1993, 1994) which includes consideration of both uncertainty and variability. When there are gaps in the available information, UF are applied to derive reference values that are intended to protect against appreciable risk of deleterious effects. UF are commonly default values,[24] *e.g.,* factors of 10 or 3, used in the absence of compound-specific data; where data are available, UF may also be developed using compound-specific information. When data are limited, more assumptions are needed and more UF are used. Thus, there may be a greater tendency to overestimate risk in the sense that further study might support development of reference values that are higher (*i.e.,* less potent) because fewer default assumptions are needed. However, for some pollutants it is possible that risks may be underestimated.

While collectively termed "UF," these factors account for a number of different quantitative considerations when using observed animal (usually rodent) or human toxicity data in the development of the RfC. The UF are intended to account for: (1) Variation in susceptibility among the members of the human population (*i.e.,* inter-individual variability); (2) uncertainty in extrapolating from experimental animal data to humans (*i.e.,* interspecies differences); (3) uncertainty in extrapolating from data obtained in a study with less-than-lifetime exposure

[22] IRIS glossary (*http://www.epa.gov/NCEA/iris/help_gloss.htm*).

[23] An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible, and which is based on maximum likelihood estimates.

[24] According to the NRC report, *Science and Judgment in Risk Assessment* (NRC, 1994) "[Default] options are generic approaches, based on general scientific knowledge and policy judgment, that are applied to various elements of the risk assessment process when the correct scientific model is unknown or uncertain." The 1983 NRC report, *Risk Assessment in the Federal Government: Managing the Process,* defined default option as "the option chosen on the basis of risk assessment policy that appears to be the best choice in the absence of data to the contrary" (NRC, 1983a, p. 63). Therefore, default options are not rules that bind the Agency; rather, the Agency may depart from them in evaluating the risks posed by a specific substance when it believes this to be appropriate. In keeping with EPA's goal of protecting public health and the environment, default assumptions are used to ensure that risk to chemicals is not underestimated (although defaults are not intended to overtly overestimate risk). See EPA 2004, *An examination of EPA Risk Assessment Principles and Practices,* EPA/100/B–04/001 available at: *http://www.epa.gov/osa/pdfs/ratf-final.pdf.*

(*i.e.,* extrapolating from sub-chronic to chronic exposure); (4) uncertainty in extrapolating the observed data to obtain an estimate of the exposure associated with no adverse effects; and (5) uncertainty when the database is incomplete or there are problems with the applicability of available studies. Many of the UF used to account for variability and uncertainty in the development of acute reference values are quite similar to those developed for chronic durations, but they more often use individual UF values that may be less than 10. UF are applied based on chemical-specific or health effect-specific information (*e.g.,* simple irritation effects do not vary appreciably between human individuals, hence a value of 3 is typically used), or based on the purpose for the reference value (see the following paragraph). The UF applied in acute reference value derivation include: (1) Heterogeneity among humans; (2) uncertainty in extrapolating from animals to humans; (3) uncertainty in lowest observable adverse effect (exposure) level to no observable effect (exposure) level adjustments; and (4) uncertainty in accounting for an incomplete database on toxic effects of potential concern. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (*e.g.,* 4 hours) to derive an acute reference value at another exposure duration (*e.g.,* 1 hour).

Not all acute reference values are developed for the same purpose and care must be taken when interpreting the results of an acute assessment of human health effects relative to the reference value or values being exceeded. Where relevant to the estimated exposures, the lack of threshold values at different levels of severity should be factored into the risk characterization as potential uncertainties.

Although every effort is made to identify peer-reviewed reference values for cancer and non-cancer effects for all pollutants emitted by the sources included in this assessment, some pollutants have no peer-reviewed reference values for cancer or chronic non-cancer or acute effects. Since exposures to these pollutants cannot be included in a quantitative risk estimate, an understatement of risk for these pollutants at environmental exposure levels is possible.

Additionally, chronic reference values for several of the compounds included in this assessment are currently under EPA IRIS review and revised assessments may determine that these pollutants are more or less potent than the current value. We may re-evaluate residual risks for the final rulemaking if, as a result of these reviews, a dose-response metric changes enough to indicate that the risk assessment supporting this notice may significantly understate human health risk.

e. Uncertainties in the Multipathway and Environmental Effects Assessment

We generally assume that when exposure levels are not anticipated to adversely affect human health, they also are not anticipated to adversely affect the environment. We generally rely on the facility-specific levels of PB–HAP emissions to determine whether a full assessment of the multi-pathway and environmental effects is necessary. Because facility-specific PB–HAP emission levels were so far below levels which would trigger a refined assessment of multi-pathway impacts, we are confident that these types of impacts are insignificant for these source categories.

f. Uncertainties in the Facility-Wide Risk Assessment

The same uncertainties discussed above exist with regard to the facility-wide risk assessments. Additionally, the degree of uncertainty associated with facility-wide emissions and risks is generally greater because we have not completed our review of emissions data for source categories not currently undergoing an RTR review.

g. Uncertainties in the Demographic Analysis

Our analysis of the distribution of risks across various demographic groups is subject to the typical uncertainties associated with census data (*e.g.,* errors in filling out and transcribing census forms), as well as the additional uncertainties associated with the extrapolation of census-block group data (*e.g.,* income level and education level) down to the census block level.

B. How did we perform the technology review?

Our technology review is focused on the identification and evaluation of "developments in practices, processes, and control technologies." If a review of available information identifies such developments, then we conduct an analysis of the technical feasibility of requiring the implementation of these developments, along with the impacts (costs, emission reductions, risk reductions, *etc.*). We then make a decision on whether it is necessary to amend the regulation to require these developments.

Based on specific knowledge of each source category, we began by identifying known developments in practices, processes, and control technologies. For the purpose of this exercise, we considered any of the following to be a "development":

- Any add-on control technology or other equipment that was not identified and considered during MACT development;
- Any improvements in add-on control technology or other equipment (that was identified and considered during MACT development) that could result in significant additional emission reduction;
- Any work practice or operational procedure that was not identified and considered during MACT development; and
- Any process change or pollution prevention alternative that could be broadly applied that was not identified and considered during MACT development.

In addition to looking back at practices, processes, or control technologies reviewed at the time we developed the MACT standard, we reviewed a variety of sources of data to aid in our evaluation of whether there were additional practices, processes, or controls to consider. One of these sources of data was subsequent air toxics rules. Since the promulgation of the MACT standards for the source categories addressed in this proposal, EPA has developed air toxics regulations for a number of additional source categories. In these subsequent air toxic regulatory actions, we consistently evaluated any new practices, processes, and control technologies. We reviewed the regulatory requirements and/or technical analyses associated with these subsequent regulatory actions to identify any practices, processes, and control technologies considered in these efforts that could possibly be applied to emission sources in the source categories under this current RTR review.

We also consulted EPA's RACT/BACT/LAER Clearinghouse (RBLC). The terms "RACT," "BACT," and "LAER" are acronyms for different program requirements under the CAA provisions addressing the national ambient air quality standards. Control technologies, classified as RACT (Reasonably Available Control Technology), BACT (Best Available Control Technology), or LAER (Lowest Achievable Emission Rate) apply to stationary sources depending on whether the sources are existing or new, and on the size, age, and location of the facility. BACT and

LAER (and sometimes RACT) are determined on a case-by-case basis, usually by State or local permitting agencies. EPA established the RBLC to provide a central data base of air pollution technology information (including technologies required in source-specific permits) to promote the sharing of information among permitting agencies and to aid in identifying future possible control technology options that might apply broadly to numerous sources within a category or apply only on a source-by-source basis. The RBLC contains over 5,000 air pollution control permit determinations that can help identify appropriate technologies to mitigate many air pollutant emission streams. We searched this database to determine whether any practices, processes, or control technologies are included for the types of processes used for emission sources (*e.g.,* tanks or vents) in the source categories under consideration in this proposal.

We also requested information from industry regarding developments in practices, processes, or control technology. Finally, we reviewed other information sources, such as State or local permitting agency databases and industry-supported databases.

C. How did we perform the analyses for the other actions being proposed?

For several of the source categories considered in this proposal, we identified significant emission points that were not previously regulated under MACT. For these emission points, consistent with the requirements of CAA sections 112(d)(2) and (3), we identified the MACT floor for existing and new sources and considered beyond-the-floor options.

We also reviewed the SSM provisions of each of the six MACT standards in light of *Sierra Club* v. *EPA,* 551 F.3d 1019. As part of this review, we evaluated available information and engaged industry concerning the type of activities and emissions that occur during periods of startup or shutdown.

Finally, we identified potential revisions to these MACT standards to correct or clarify regulatory requirements. In the years since promulgation and compliance with the MACT standards, EPA has received comments and suggestions for improving the clarity of the MACT standards in general, as well as rule-specific comments for some individual MACT standards. These comments include such things as identification of editorial errors in the rule, clarification of existing rule text, regulatory obstacles to effective implementation of or compliance with the rule provisions. EPA has also independently identified these types of issues. We are proposing rule changes where appropriate.

V. Analyses Results and Proposed Decisions

This section of the preamble provides background information on the MACT standards and source categories, the results of our RTR for each source category, our proposed actions to address significant unregulated emission points for a number of source categories, our proposed decisions concerning the SSM provisions in each of the six MACT standards, and the specific clarifications we are proposing for selected MACT standards.

A. What are the results and proposed decisions for the Chromium Electroplating source categories?

1. Overview of the Source Categories and MACT Standard

National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (Chromium Electroplating MACT standards) were promulgated on January 25, 1995 (60 FR 4963), and codified at 40 CFR part 63, subpart N. The Chromium Electroplating MACT standards regulate emissions of chromium compounds from three related source categories: Hard Chromium Electroplating, Decorative Chromium Electroplating, and Chromium Anodizing. Within these source categories, the MACT standards apply to all plants, both major and area sources, regardless of size.

The Hard Chromium Electroplating source category consists of facilities that plate base metals with a relatively thick layer of chromium using an electrolytic process. Hard chromium electroplating provides a finish that is resistant to wear, abrasion, heat, and corrosion. These facilities plate large cylinders and industrial rolls used in construction equipment and printing presses, hydraulic cylinders and rods, zinc die castings, plastic molds, engine components, and marine hardware.

The Decorative Chromium Electroplating source category consists of facilities that plate base materials such as brass, steel, aluminum, or plastic with layers of copper and nickel, followed by a relatively thin layer of chromium to provide a bright, tarnish- and wear-resistant surface. Decorative chromium electroplating is used for items such as automotive trim, metal furniture, bicycles, hand tools, and plumbing fixtures.

The Chromium Anodizing source category consists of facilities that use chromic acid to form an oxide layer on aluminum to provide resistance to corrosion. The chromium anodizing process is used to coat aircraft parts (such as wings and landing gears), as well as architectural structures that are subject to high stress and corrosive conditions.

The HAP emission sources subject to the Chromium Electroplating NESHAP are the tanks in which the chromium deposition takes place. For hard chromium and decorative chromium electroplating facilities, the emission sources are electroplating tanks. For the Chromium Anodizing source category, the emission sources are anodizing tanks.

The primary emission controls used by the facilities in these source categories include packed bed scrubbers, mesh pad mist eliminators, composite mesh pad (CMP) systems, high efficiency particulate air (HEPA) filters, and wetting agent/fume suppressants (WAFS). Most decorative chromium electroplating plants comply with the MACT standards by using WAFS in the tank bath to control surface tension, which in turn reduces emissions. Some plants use a combination of WAFS and add-on control to meet the MACT emission limits. If a facility controls emissions using an add-on control device, the tank is generally equipped with a hood and duct work to exhaust emissions through the control device and out the stack. However, when WAFS are used as the only means of emission control, the tanks often are not equipped with exhaust hoods. In such cases, emissions from the tank are fugitive and are exhausted to the outside using wall-mounted exhaust fans.

We estimate that there are approximately 1,770 plants that are currently subject to the Chromium Electroplating MACT standards. Of these, we estimate that there are 790 hard chromium electroplating plants, 740 decorative chromium electroplating plants, and 240 chromium anodizing plants. A detailed description of how the number of each type of plant was estimated can be found in the *Estimated Number of Chromium Electroplating Plants* document available in the docket for this action. Some facilities perform more than one type of chromium electroplating or anodizing. For purposes of our estimates, we classified facilities as hard chromium, decorative chromium, or chromium anodizing based on the primary type of electroplating operation performed at the facility. Some chromium

electroplating facilities electroplate items that are used internally in the manufacturing process at the same facility or within the same company. For example, some large printing facilities electroplate their printing rollers in house, and the chromium electroplating processes are located at the same site as the printing and publishing processes.

2. What data were used in our risk analyses?

For the Chromium Electroplating source categories, we compiled a preliminary data set using data in the 2005 NEI. A review of the NEI resulted in the identification of data for 122 chromium electroplating facilities. These data were reviewed and the data for eight hard chromium and six decorative chromium electroplating plants were revised based on information in the facilities' permits or permit applications. Additional data were available for 44 facilities through responses to a CAA section 114 information request that was sent to facilities for the Plating and Polishing Area Source rule. The data for these facilities were added to the NEI data set, and, as with the original data, represent actual emission levels for these electroplating and anodizing facilities. Most of these facilities have low emissions, which are generally less than 2 pounds per year (lbs/yr). These 166 facilities now included in the 2005 NEI comprise approximately 9 percent of the estimated 1,770 facilities covered by the MACT standards, and include 63 hard chromium electroplating, 96 decorative chromium electroplating, and 7 chromium anodizing facilities.[25] This data set of 166 facilities was modeled to determine the maximum individual cancer risk, the population cancer risk, the cancer incidence, and the maximum chronic non-cancer risk for the three source categories based on actual emissions. The maximum individual cancer risk and the maximum chronic non-cancer risk estimated from this data set were also compared to the maximum individual cancer risk and the maximum chronic non-cancer risk estimated from MACT-allowable emissions for the three source categories.[26]

To address the possibility that the small number of facilities included in the 166-facility data set might not be fully representative of the source categories and their risks, we developed an additional data set. In the development of this data set, we used "model plants" developed for the original MACT standard to represent the individual facilities. For hard and decorative chromium electroplating, we used three model plants (large, medium, and small) that represent average characteristics for each of these groups. For each of these plant sizes, there is an annual emissions rate (lbs/yr) that is derived from the design and operating parameters, and is specific to the size and type of model plant. For chromium anodizing, we have two model plants (large and small). The model plants were based on data collected during development of the original MACT standards from 1988 to 1993 from more than 100 facilities that responded to an Information Collection Request (ICR) for the chromium electroplating and anodizing industry. Data from site visits and other information also were used in developing the model plants. A complete description of the model plants developed for the MACT standard is provided in the Background Information Document (BID) for the original MACT standard (Chromium Electroplating BID).

The basis for this additional data set is 1,629 chromium electroplating facilities with known addresses.[27] For about half of these facilities, the type of electroplating performed is known, but the size of the facility is not known. For the remaining facilities, neither the type of chromium electroplating process or processes, nor the facility size is known.

For use in the risk analysis, the limited available data were used to divide these facilities into six groups. Facilities in three of the six groups were assigned to be hard chromium electroplating facilities. Those groups include: hard chromium facilities; facilities with combined hard chromium operations and other electroplating or anodizing; and facilities with unknown processes. Together, these three groups yielded a total of 1,219 plants, all of which we modeled as hard chromium electroplating facilities. This total, in addition to the 63 hard chromium electroplating facilities in the 2005 NEI data set, yields a total of 1,282 facilities, which is substantially higher than the 790 hard chromium facilities that we estimate exist in the United States. However, because hard chromium facilities have the highest emissions among the three source categories, we made these selections as a conservative or health-protective assumption.

To represent the decorative chromium electroplating facilities, we combined two of the six groups of facilities; decorative chromium facilities and facilities that perform both decorative chromium and chromium anodizing. This results in 319 decorative chromium facilities in this data set, which, even when combined with the 96 decorative chromium electroplating facilities in the 2005 NEI data set, is less than the 740 facilities that we believe exist in the industry. Because we modeled all of the unknown electroplating type facilities as the highest-emitting hard chromium electroplating facilities, we consider this assessment to be conservative, even though it appears to under-represent decorative chromium facilities.

Similarly, the last of the six groups are all known chromium anodizing facilities. This group includes 73 facilities, and, when combined with the 7 chromium anodizing facilities in the 2005 NEI data set, still represents only about a third of the 240 facilities chromium anodizing facilities. Again, we believe this is conservative because those facilities not modeled as chromium anodizing plants were modeled as the higher emitting hard chromium facilities in the analysis.

To estimate the risks for this assessment, we needed to establish estimated emissions for each of the electroplating and anodizing types. To ensure that we did not underestimate cancer risk to the most exposed individual, we originally planned to use the large plant emission factors that we had developed for the original MACT standard to represent all model plants for each type of chromium electroplating processing. In reviewing available emissions data, we found that, while the large plant emission factors adequately represent the average chromium emissions from known large decorative chromium electroplating and large chromium anodizing facilities, they are not representative of the average chromium emissions from large hard chromium electroplating facilities.

The emission factor for large hard chromium electroplating developed for the original MACT standard was 35.3 lbs/yr. However, in comparing this emission factor to available emissions data for individual facilities, we find that this emissions factor is unrealistically high and does not represent the average level of emissions for large facilities as we would expect to see under the current MACT standard. As explained more fully in the *Model Plant Data Used to Estimate Risk from*

[25] The National Association of Surface Finishers provided OMB with data for 15 plants. We have placed this information in the docket for this rulemaking.

[26] The Occupational Safety and Health Administration adopted a lower permissible exposure limit for hexavalent chromium in 2006.

[27] There is some overlap between the 1,629 facilities with known addresses and the 166 facilities for which we have emissions data based on the NEI and the data collection request.

Chromium Electroplating Sources document available in the docket for this action, based on the large model plant design flow rate and operating hours, a large hard chromium model plant operating at the MACT emission limit of 0.015 milligrams per dry standard cubic meter (mg/dscm) would emit a maximum of only 23.6 lbs/yr of chromium compounds. Moreover, the available data on actual emissions for hard chromium electroplating plants indicate there are only 4 plants with annual emissions greater than 10 lbs/yr. As a result, we determined that the large size model plant emissions factor, as defined for the original MACT standard, is not representative of existing large hard chromium electroplating facilities on a nationwide basis. On the other hand, the emission factor associated with a medium size hard chromium electroplating model plant (9.26 lbs/yr) falls between the 90th percentile (8.04 lbs/yr) and the 95th percentile (11.6 lbs/yr) of the available emissions data for hard chromium electroplating facilities. Because this emission factor, which was originally developed for medium sized facilities at the time the MACT standard was developed, is representative of the emissions from large facilities, the emissions factor of 9.26 lbs/yr was used to represent current large hard chromium electroplating facilities. Thus, for purposes of this residual risk review, we refer to 9.26 lbs/yr as the emissions factor for a "large" hard chromium electroplating facility.

We believe the approach of using the "large" facility emissions factor to represent all facility sizes is reasonable to ensure that we did not underestimate maximum individual cancer risk. Although we believe that only a small percentage of the facilities are large, we recognize that we do not have emissions data for approximately 90 percent of the sources. Thus, by assuming all sources are large, we have ensured that we will not underestimate the maximum individual risk.

For hard chromium electroplating, the model plant emission factors for small, medium, and large facilities range from 0.55 to 9.26 lbs/yr. While we expect only 10 percent of the facilities to be large, based on the distribution of model plant sizes developed for the MACT standard, we used the emissions factor for a large facility (9.26 lbs/yr) for all of the 1,219 facilities that we considered as hard chromium electroplating facilities. Similarly, for decorative chromium electroplating, the emission factors for small, medium, and large facilities are 0.065, 0.27, and 2.65 lbs/yr, respectively, and the large facility emissions factor was used in the risk assessment for decorative chromium. For the Decorative Chromium category, we estimate that only 5 percent of the facilities are large, based upon the distribution of decorative chromium plants nationwide when the original NESHAP were developed. Finally, for chromium anodizing, the emission factor for small facilities is 0.036 lb/yr, and for large facilities, is 0.44 lb/yr. The large facility emissions factor (0.44 lb/yr) was used in the conservative analysis for all of the anodizing facilities even though we estimate that only 25 percent are large.

Population risk indicators can be greatly overstated when highly conservative emission estimates are applied to every facility in the source category. Recognizing this fact, we performed a supplemental analysis to better address nationwide average emission levels and assess the sensitivity of our population risk estimates. Thus, as described further below, the supplemental analysis was performed to understand the degree to which the risk might be overstated, and, thus, how much weight to attach to the conservative analysis. The conservatism of this risk assessment is one factor that we consider in determining whether the risk is acceptable within the meaning of the Benzene NESHAP.

For the supplemental analysis, we assigned unique emission factors to each of the 6 groups of facilities in our 1,629 facility data set. These emission factors were developed to better estimate the average emissions for all of the sources within each group. The new emission factors are:

- 2.24 lbs/yr for known hard chromium electroplating facilities,
- 0.225 lb/yr for known decorative chromium electroplating facilities,
- 0.137 lb/yr for known chromium anodizing facilities,
- 1.23 lbs/yr for facilities with combinations of hard chromium electroplating and either decorative electroplating or anodizing,
- 0.181 lb/yr for facilities with combinations of decorative electroplating and anodizing, and
- 1.11 lbs/yr for facilities where the type of process (electroplating or anodizing) is unknown.

A detailed explanation for how these emission factors were derived can be found in the *Model Plant Data Used to Estimate Risk from Chromium Electroplating Sources* available in the docket for this action. These weighted average emission factors account for the plant type (hard chromium electroplating, decorative chromium electroplating, or chromium anodizing) and the distribution of plant sizes (large, medium, or small). For example, the average emissions factor for hard chromium electroplating (2.24 lbs/yr) is the weighted average of the model plant emission factors for large plants (10 percent of plants at 9.26 lbs/yr per plant), medium plants (20 percent of plants at 4.63 lbs/yr per plant, and small plants (70 percent of plants at 0.55 lb/yr per plant). This distribution of plant sizes is based on actual data collected during development of the original MACT rule. We have no reason to believe the distribution of facility sizes has changed significantly since then.

The uncertainties associated with both the conservative analysis and the supplemental analysis include the estimated distribution of plant types and sizes as well as the facility emissions factors. Although the type of plants used in the NEI analysis is based on a variety of reliable sources, including ICR responses for the Plating and Polishing NESHAP, trade association data, data from State agencies, and information from Web sites, we were unable to identify the plant type for nearly half of the data set. For those plants of unknown type, we used the highest emissions factor, which corresponds to a large hard chromium plant, in the conservative analysis. For the supplemental analysis, we developed an emissions factor using a weighted average across all plant types and sizes. For all plants that were modeled, we are soliciting additional information on actual and MACT-allowable emissions, plant type, and plant size. More information about the development of the model plants can be found in the *Model Plant Data Used to Estimate Risk from Chromium Electroplating Sources* document available in the docket for this action.

In all the data sets, chromium compounds account for all the HAP emissions from the Chromium Electroplating and Chromium Anodizing source categories. For the Hard Chromium Electroplating source category, in the NEI-based data set, chromium VI compounds account for 98 percent of the emissions, with chromium III and chromium trioxide compounds comprising the remaining HAP. In both the NEI and model plant emission estimates, we made the conservative assumption that 100 percent of the emissions are chromium VI compounds. For the Decorative Chromium Electroplating source category, in the NEI-based data set, chromium VI compounds account for 94 percent of the emissions, with chromium III and chromium trioxide compounds comprising the remaining HAP. In both emission estimates, we

made the conservative assumption that 100 percent of the emissions are chromium VI compounds. For the Chromium Anodizing source category, in the NEI-based data set, chromium VI compounds account for 99 percent of the emissions with chromium III compounds comprising the remaining HAP. In both emission estimates, we made the conservative assumption that 100 percent of the emissions are chromium VI compounds.

3. What are the results of the risk assessments and analyses?

We conducted an inhalation risk assessment for each of the three source categories: Hard Chromium Electroplating, Decorative Chromium Electroplating, and Chromium Anodizing. Also, for each source category, we conducted an assessment of facility-wide risk, and performed a demographic analysis of population risks. As noted above, we developed two data sets for these source categories, one based primarily on NEI data for 166 sources, and one based on model plant data for 1,629 sources.

The following tables present the combined results from the data sets. Table A.1 provides an overall summary of the maximum individual inhalation risk assessment results, and Table A.2 provides population risk assessment results for the Hard Chromium Electroplating, Decorative Chromium Electroplating, and Chromium Anodizing source categories.

TABLE A.1—CHROMIUM ELECTROPLATING AND ANODIZING MAXIMUM INDIVIDUAL INHALATION RISK ASSESSMENT RESULTS*

Source category	Number of facilities (NEI/model plant) [1]	Maximum individual cancer risk (in 1 million) [2]		Maximum chronic non-cancer TOSHI [3]		Maximum off-site acute non-cancer HQ [4]
		Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	
Hard Chromium Electroplating	63/1,219	70	90	0.06	0.09	Not applicable [5].
Decorative Chromium Electroplating	96/337	70	70	0.06	0.06	Not applicable [5].
Chromium Anodizing	7/73	5	5	0.004	0.004	Not applicable [5].

* All results are for impacts out to 50 km from each source in the categories.
[1] Number of facilities evaluated in the risk analysis: the first number refers to the NEI data set, and the second number applies to the conservative emission estimate.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the Hard Chromium Electroplating, Decorative Chromium Electroplating, and Chromium Anodizing source categories is the respiratory system.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which, in most cases, is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute threshold. See section IV.A. of this preamble for explanation of acute threshold values.
[5] NA = not applicable. There are no HAP with acute dose-response benchmark values, so no acute HQ were calculated for these source categories. See section IV.A of this preamble for an explanation of acute threshold values.

TABLE A.2—CHROMIUM ELECTROPLATING AND ANODIZING POPULATION RISK INHALATION RISK ASSESSMENT RESULTS

Source category	Number of facilities (NEI/model plant)	Conservative assessment population at risk		Conservative annual cancer incidence (cases per year)	Supplemental assessment population at risk		Supplemental annual cancer incidence (case per year)
		≥ 1-in-1 million	≥ 10-in-1 million		≥ 1-in-1 million	≥ 10-in-1 million	
Hard Chromium Electroplating	63/1,219	14,200,000	71,000	0.8	360,000	5,100	0.1
Decorative Chromium Electroplating	96/337	390,000	4,000	0.08	30,000	1,300	0.01
Chromium Anodizing	7/73	2,700	0	0.003	540	0	0.001

As shown in Table A.1, the results of the inhalation risk assessment for the Hard Chromium Electroplating source category indicate the maximum lifetime individual cancer risk could be as high as 70-in-1 million, based on actual emissions, and as high as 90-in-1 million based on allowable emissions. This maximum individual cancer risk is based on the highest risk facility out of the 63 actual facilities and the 1,219 model plants. The highest risk facility is one for which we have design and operating data, and we believe it is also both the largest and highest emitting hard chromium electroplating facility in the United States. Thus, we believe this level accurately reflects the maximum individual exposure. The maximum chronic non-cancer TOSHI value could be 0.06, based on the actual emissions level, and up to 0.09 based on allowables. This value is also based on known emission levels from the largest facility in the nation. A non-cancer TOSHI of one or less is not of human health concern.

The total estimated national cancer incidence from hard chromium electroplating facilities based on actual emission levels is 0.8 excess cancer cases per year, or one case in every 1.25 years for the conservative assessment. Our risk assessment shows 14.2 million people exposed to a cancer risk greater than 1-in-1 million and 71,000 people exposed to a cancer risk of at least 10-in-1 million.

As noted above, we conducted a supplemental analysis to determine the weight to give to the conservative risk analysis. That supplemental analysis estimates 0.1 excess cancer cases per year, or one case in every 10 years. Additionally, it estimates a population exposure of 360,000 people at 1-in-1 million cancer risk. For a cancer risk of at least 10-in-1 million, the population exposed decreases to 5,100.

Based on the 2005 NEI data set for the Decorative Chromium Electroplating

source category, the maximum lifetime individual cancer risk could be as high as 70-in-1 million, and the maximum chronic non-cancer TOSHI value could be up to 0.06, based on the actual emissions level.[28] We do not believe the maximum lifetime individual cancer risk and the maximum chronic non-cancer TOSHI value would be any higher than this based on allowable emissions. The total estimated population risks from the conservative risk assessment of the decorative chromium electroplating facilities based on actual emission levels is 390,000 people exposed to a cancer risk greater than 1-in-1 million and 0.08 excess cancer cases per year, or one case in every 12 years.[29]

Based on the 2005 NEI data set for the Chromium Anodizing source category, the maximum lifetime individual cancer risk could be as high as 5-in-1 million and the maximum chronic non-cancer TOSHI value could be up to 0.004, based on the actual emissions level. The total estimated population risks from the conservative assessment of the chromium anodizing facilities based on actual emission levels is 2,700 people exposed to a cancer risk greater than 1-in-1 million and 0.003 excess cancer cases per year, or one case in every 333 years.[30]

Also, as there were no reported emissions of PB–HAP for these three source categories, we do not expect the potential for human health multipathway risks or adverse environmental impacts.

Our analyses of potential differences between actual emission levels and emissions allowable under the MACT standards are based on emissions test data from specific facilities. A comparison of these test results to allowable emissions at these facilities indicates that the ratio of MACT-allowable to actual emissions varies considerably from facility to facility. As a result, a uniform factor was not available to apply to all facilities. However, for the Hard Chromium Electroplating source category, we did evaluate the facility that was modeled as having the highest maximum individual lifetime cancer risk (70-in-1 million) based on actual emissions. Our analysis indicates that this facility, if operated at the allowable emissions limit, could have a maximum individual lifetime cancer risk as high as 90-in-1 million. Furthermore, the available data indicate that no other hard chromium electroplating facility would have a cancer risk that high if operated at the allowable emissions limit.

For the Decorative Chromium Electroplating source category, we performed a similar analysis of the available data and concluded that the maximum individual lifetime cancer risk would not exceed 70-in-1 million for any facility that operated at the allowable emissions limit. As stated earlier, because most chromium anodizing facilities use WAFS, we believe actual emissions are essentially the same as allowable emissions. Thus, we believe that the MIR based on allowable emissions would be the same as that based on actual emissions, *i.e.,* 5-in-1 million.

Table A.3 displays the results of the facility-wide risk assessment for actual emissions of all sources at the facility as reported in the NEI. We did not perform a facility-wide risk assessment based on allowable emissions, as explained in the documentation referenced in section IV.A of this preamble, which is available in the docket for this action.

TABLE A.3—CHROMIUM ELECTROPLATING AND ANODIZING FACILITY-WIDE RISK ASSESSMENT RESULTS

Source category	Maximum facility-wide individual cancer risk (in 1 million)	Source category contribution to this maximum facility-wide individual cancer risk [1]	Maximum facility-wide chronic non-cancer TOSHI	Source category contribution to this maximum facility-wide chronic non-cancer TOSHI [1]
Hard Chromium Electroplating	90	< 1%	2	< 1%
Decorative Chromium Electroplating	90	7%	0.8	< 1%
Chromium Anodizing	20	75%	0.2	< 1%

[1] Percentage shown reflects source category contribution to the maximum facility-wide risks at the facility with the maximum risk value shown.

As shown in Table A.3, the maximum individual cancer risks from all HAP emissions at facilities that perform hard chromium electroplating, decorative chromium electroplating, and chromium anodizing are estimated to be 90-in-1 million, 90-in-1 million, and 20-in-1 million, respectively. For the facilities where these maximum risk values occur, the estimated proportion of the cancer risk attributable to the hard chromium electroplating, decorative chromium electroplating, and chromium anodizing processes is less than 1 percent, 7 percent, and 75 percent, respectively. The highest facility-wide cancer risk for a facility that includes a hard chromium electroplating source is primarily driven by chemical production processes. We are currently developing a chemical manufacturing sector project [31] and plan to address risk from these chemical production processes as part of that action. The highest facility-wide cancer risk for a facility that includes a decorative chromium electroplating

[28] There is uncertainty regarding the operating status of the facility (reported to be closed) associated with the maximum lifetime individual cancer risk. Prior to any final rulemaking action, we will investigate this situation and revise the risk analysis and results accordingly.

[29] Based on our conservative risk assessment, we believe the risks are low, and, as explained further below, are proposing that the risks are acceptable for the Decorative Chromium source category. Although we did not need to consider the supplemental analysis that we conducted for Decorative Chromium to help guide our conclusion about the uncertainty of the risk assessment results, we note that the supplemental assessment shows 30,000 people exposed to a cancer risk greater than 1-in-1 million and 0.01 excess cancer case per year, or one case in every 100 years.

[30] Based on our conservative risk assessment, we believe the risks are low, and, as explained further below, are proposing that the risks are acceptable for the Chromium Anodizing source category. Although we did not need to consider the supplemental analysis that we conducted for Chromium Anodizing to help guide our conclusion about the uncertainty of the risk assessment results, we note that the supplemental assessment shows 540 people exposed to a cancer risk greater than 1-in-1 million and 0.001 excess cancer case per year, or one case in every 1,000 years.

[31] This is one of several projects EPA is undertaking to establish and implement national emission-control measures for specific sectors of the economy by taking an integrated multipollutant approach to assessing and implementing additional emission controls using our existing regulatory frameworks.

source is primarily driven by aerospace processes that will be addressed in a future residual risk review for the Aerospace Manufacturing and Rework Facilities source category. The highest facility-wide cancer risk for a facility that includes a chromium anodizing source is primarily driven by the chromium anodizing processes. The facility-wide maximum chronic non-cancer TOSHI values for facilities that include Hard Chromium Electroplating, Decorative Chromium Electroplating, and Chromium Anodizing source category processes are estimated to be 2, 0.8, and 0.2, respectively. At the facilities where these maximum risk values occur, the estimated proportion of the non-cancer risk attributable to the Hard Chromium Electroplating, Decorative Chromium Electroplating, and Chromium Anodizing source category processes is less than 1 percent for each source category.

The results of the demographic analyses performed to investigate the distribution of risks above 1-in-1 million, based on actual emissions levels for the population living within 5 km of the facilities, among various demographic groups are provided in a report available in the docket for this action and summarized in Tables A.4, A.5, and A.6 below. These estimates of total population with risk exceeding 1-in-1 million differ from the risk estimates presented above because the demographic analysis uses a 5 km radius and the risk assessment results provided above reflect use of a 50 km radius around all chromium electroplating facilities.

TABLE A.4—HARD CHROME ELECTROPLATING DEMOGRAPHIC RISK ANALYSIS RESULTS

Emissions basis	Maximum risk (in 1 million)	Population with risk greater than 1-in-1 million							
		Total (millions)	Minority %	African American %	Other and multiracial %	Hispanic or Latino %	Native American %	Below the poverty level %	Over 25 w/o a HS diploma %
Nationwide	n/a	285	25	12	12	14	0.9	13	13
Source Category	70	13.1	52	23	29	34	0.6	22	20
Facility-wide	90	13.1	52	23	29	34	0.6	22	20

TABLE A.5—DECORATIVE CHROMIUM ELECTROPLATING DEMOGRAPHIC RISK ANALYSIS RESULTS

Emissions basis	Maximum risk (in 1 million)	Population with risk greater than 1-in-1 million							
		Total (millions)	Minority %	African American %	Other and multiracial %	Hispanic or Latino %	Native American %	Below the poverty level %	Over 25 w/o a HS diploma %
Nationwide	n/a	285	25	12	12	14	0.9	13	13
Source Category	70	0.35	50	18	32	47	0.8	24	23
Facility-wide	90	0.43	54	21	32	48	0.7	24	25

TABLE A.6—CHROMIUM ANODIZING DEMOGRAPHIC RISK ANALYSIS RESULTS

Emissions basis	Maximum risk (in 1 million)	Population with risk greater than 1-in-1 million							
		Total (millions)	Minority %	African American %	Other and multiracial %	Hispanic or Latino %	Native American %	Below the poverty level %	Over 25 w/o a HS diploma %
Nationwide	n/a	285	25	12	12	14	0.9	13	13
Source Category	5	0.0027	36	16	0	0	0.4	25	19
Facility-wide	20	0.0079	22	10	12	13	0.8	19	16

The results of the demographic analysis show that, for the population located within 5 km of Hard Chromium Electroplating source category, there are about 13.1 million people with cancer risks greater than 1-in-1 million for both the source category and facility-wide. Of this population at risk, 52 percent could be classified as a "Minority," 34 percent are included in the "Hispanic or Latino" demographic group, 29 percent are included in the "Other and Multiracial" demographic group, 23 percent are included in the "African-American" demographic group, 22 percent are included in the "Below Poverty Level" demographic group, and 20 percent are included in the "Over 25 Without a High School Diploma" demographic group. The percentage of the population within 5 km of a hard chromium electroplating facility and with a cancer risk greater than 1-in-1 million is higher than the typical distribution of these demographic groups across the United States. These demographic analyses are based on the conservative assessment results.

For the Decorative Chromium Electroplating source category, there are about 350,000 people with cancer risks greater than 1-in-1 million for the source category and 430,000 people with

cancer risks greater than 1-in-1 million facility-wide. Of this population at risk, 50 percent could be classified as a "Minority," 47 percent are included in the "Hispanic or Latino" demographic group, 32 percent are included in the "Other and Multiracial," demographic group, 18 percent are included in the "African-American" demographic group, 24 percent are included in the "Below Poverty Level" demographic group, and 23 percent are included in the "Over 25 Without a High School Diploma" demographic group. The percentage of the population within 5 km of a decorative chromium electroplating facility and with a cancer risks greater than 1-in-1 million is higher than the typical distribution of these demographic groups across the United States. The results of the demographic analysis for facility-wide emissions are similar to the results for the source category.

For the Chromium Anodizing source category, there are about 2,700 people with cancer risks greater than 1-in-1 million and 7,900 people with cancer risks greater than 1-in-1 million facility-wide. Of the population with cancer risks greater than 1-in-1 million, 36 percent could be classified as a "Minority," 16 percent are included in the "African-American" demographic group, 25 percent are included in the "Below Poverty Level" demographic group, and 19 percent are included in the "Over 25 Without a High School Diploma" demographic group. The percentage of the population within 5 km of a chromium anodizing facility and with a cancer risk greater than 1-in-1 million is higher than the typical distribution of these demographic groups across the United States. The results of the facility-wide demographic analysis are higher than the typical distribution of risks to the demographic groups across the United States, for the "Below Poverty Level" and the "Over 25 Without a High School Diploma" demographic groups, but are lower than these levels for the other demographic groups.

Details of these assessments and analyses can be found in the residual risk documentation as referenced in section IV.A of this preamble, which is available in the docket for this action.

4. What are our proposed decisions on risk acceptability and ample margin of safety?

a. Risk Acceptability

The risk analysis we performed for this proposal indicates that for the Hard Chromium Electroplating source category, the cancer risks to the individual most exposed is 70-in-1 million based on actual emissions and 90-in-1 million based on MACT-allowable emissions. The maximum non-cancer risk level, which is low, is a TOSHI of 0.06 based on actual emissions and 0.09 based on allowable emissions. These risks are due to estimated emissions of hexavalent chromium, which EPA describes as a known human carcinogen by the inhalation route of exposure. As explained above, both the MIR and the maximum non-cancer risk levels are based on emissions from what we believe is the highest risk hard chromium facility operating in the United States.

We further estimate that the excess cancer incidence could be as high as 0.8 cases per year, and that over 14 million people could be exposed to a cancer risk of 1-in-1 million or greater. These risk levels are based on a highly conservative risk assessment as described above. In summary, in this assessment we used (1) actual emissions data for 63 facilities and (2) emissions estimates that are reflective of average emissions for the highest emitting facilities for each one of an additional 1,219 facilities not in the original dataset. Because there are only 790 hard chromium facilities, and because only ten percent of the facilities would have this high an emissions rate, we believe that these conservative risk assessment results overstate cancer incidence and population exposure.

As noted above, we performed a supplemental analysis to assess the degree to which the conservative risk assessment may overstate risks, and, thus, to determine how heavily to weigh those risks in determining whether to find the risks acceptable. In this supplemental analysis we assessed these risks based on (1) the emissions data used in the conservative assessment for the 63 facilities for which we have actual facility emission information, and (2) revised emission data that better represent nationwide average emission levels for the 1,219 facilities. The supplemental assessment indicates that the excess cancer risks from hard chromium electroplating facilities is 0.1 cancer cases per year and 360,000 people exposed to a cancer risk of 1-in-1 million or more, which is substantially less than we found with the conservative assessment. These results indicate that the estimated risks are uncertain and are highly sensitive to input assumptions and that the conservative assessment may substantially overstate risks.

The results of our demographic analysis indicate that minorities face disproportionate risks [32] from exposure to emissions from this category (Tables A.4–A.6). Although the demographic analysis was based on our conservative risk assessment modeling, we have no reason to believe that the results would be substantially different were we to re-run that analysis using the assumptions underlying the supplemental assessment. This is because the disparate impacts identified through our demographic analysis are reflective of the fact that many chrome facilities are located in inner city urban areas, and in or near residential neighborhoods more likely to be inhabited by minority and low income persons. We are concerned about the potential disproportionate health risks from these urban facilities on minorities and those below the poverty level. We solicit comment on whether there may be pollution prevention efforts or other HAP emission reduction approaches that could mitigate the impacts that these facilities have on their immediate surroundings. We also recognize that, in addition to whatever controls are required in the final rulemaking for the Hard Chromium Electroplating source category, there may be other approaches, such as facility-specific compliance assistance, that could mitigate the impacts that these facilities have on their immediate surroundings. We solicit comment and supporting information to assist EPA in identifying measures to mitigate these disproportionate risks.

In accordance with the approach established in the Benzene NESHAP, EPA weighed all health risk measures and information, including the maximum individual cancer risk, the cancer incidence, the number of people exposed to a risk greater than 1-in-1 million, the distribution of risks in the exposed population, and the uncertainty of our risk calculations in determining whether the risk posed by emissions from hard chromium facilities is acceptable.

As an initial matter, we note that the 90-in-1 million risk based on allowable emissions is approaching the "presumptive limit on maximum individual lifetime risk of approximately 1-in-10 thousand [100-in-1 million]" recognized in the Benzene NESHAP (54 FR 38045). We also note

[32] Using census data on race and ethnicity, we estimated the percentage of people in the United States that are minority. We also estimated the percentage of people that live within 5 km of each facility and have cancer risks greater than 1-in-1 million that are minority. Where the percentage of people at risk is higher than the percentage nationwide, those minorities face disproportionate risks.

that, based on our conservative analysis, there is a high level of cancer incidence of 0.8 excess cancer cases per year nationwide, and a very large number (14.2 million) of people potentially exposed to a cancer risk greater than 1-in-1 million.[33] However, we also recognize that our supplemental assessment based on alternative input assumptions concerning emissions (that better represent nationwide average emissions) indicate that the results of the conservative assessments are substantially overstated. Thus, there is great uncertainty about both the cancer incidence and the number of people exposed.

On the one hand, we acknowledge that the cancer incidence and number of people exposed to cancer risks of 1-in-1 million or greater are high based on our conservative analysis. On the other hand, we recognize the significant uncertainty of these risk estimates and the likelihood that they are overstated, based on the conservative nature of the assessment. The supplemental analysis highlights the sensitivity of our risk analysis to highly uncertain input assumptions and supports a determination that the population exposure and cancer incidence risk numbers are overstated. It shows substantially lower cancer incidence (0.1 excess cases per year nationwide as opposed to 0.8) and number of people potentially exposed to a cancer risk of 1-in-1 million or more (360 thousand as opposed to 14.2 million). In addition, the distribution of risks in the exposed population shows the number of people exposed to a cancer risk greater than 10-in-1 million is 71,000 for the conservative assessment and 5,100 for the supplemental analysis.

In determining whether risk is acceptable, we focus on the results of all aspects of the risk assessment. Because the MIR is less than 100-in-1 million, and because of the significant uncertainty of the cancer incidence and number of people exposed, which we believe are overstated based on the fact that our risk analysis was highly conservative, at this time, we are proposing that the risks from the Hard Chromium Electroplating source category are acceptable. We are proposing that the risks are acceptable, in large part, because we believe that the assumptions underlying the supplemental analysis may present a more realistic estimate of the emissions from hard chromium facilities.

[33] These comparisons refer to estimates of incidence and populations from risk assessments performed for other source categories previously covered by RTR risk assessments.

However, we are very concerned by the results of our conservative risk analysis, especially the large number of people (including disproportionately affected populations) estimated to be exposed at a cancer risk above 1-in-1 million. We are also concerned about the level of uncertainty with our analysis given that we have very limited information as to the number (and size) of the facilities. While our current proposal is supported by recognizing the uncertainty associated with the high risk levels from our conservative assessment and, as explained above, that uncertainty (as demonstrated by the supplemental analysis) points in the direction of an overstatement of risk, we would prefer to base a final rule on more complete and reliable information. The purpose of the residual risk standards under CAA section 112(f) is to ensure protection of public health and the environment. Thus, we believe it is important to develop a conservative risk analysis and err on the side of potential overestimation of risk analyses where we are missing data. In this case, we recognize that the assessment may be overly conservative, and we are considering additional methods for performing a conservative analysis. However, we believe additional information and data regarding the location, type and size of facilities will be important to performing any additional analysis that would err on the side of protectiveness without being overly conservative. At this time, we are not certain that we would take final action finding the risk to be acceptable based on the limited information currently available to the Agency.

The comments and information that we receive on this proposal will be critical in making a final decision on acceptability. We are soliciting comment and data to help the Agency make an informed decision as it moves forward with this rulemaking. Specifically, with regard to each of the facilities listed in Appendix A to this preamble, we are seeking to identify (1) the actual annual emissions, if known; (2) which of the three source categories it falls within; and (3) whether, for hard chromium, it is a "large" or "small" facility within the definitions in 40 CFR 63.341(a). In particular, we are encouraging the States to provide EPA with better inventory data for sources within their States. Moreover, we are encouraging States to help identify sources that may be located near sensitive populations or other populations of concern, such as located near schools or that may be located in communities with a significant minority population. To feel comfortable with a final decision finding the risk acceptable, we believe it is important to reduce the level of uncertainty associated with our current analyses. Thus, in light of the comments and any additional data (or lack thereof) that we receive during the comment period, we may determine that it is appropriate to issue a supplemental proposal in which we propose to find the risk unacceptable. If we issue a supplemental proposal in which we propose to find the risk unacceptable, we would be required to propose emissions standards or work practices that reduce risk to a level that is acceptable and provides an ample margin of safety.

For the Decorative Chromium Electroplating source category, the cancer risks to the individual most exposed is 70-in-1 million, based on both actual and MACT-allowable emissions. Based on this cancer risk level and in consideration of other health measures and factors, including the cancer incidence (one case in every 12.5 years) and the low maximum non-cancer risk level (TOSHI of 0.06 based on both actual and MACT-allowable emissions), we propose that the risks from the Decorative Chromium Electroplating source category are acceptable.

For the Chromium Anodizing source category, the cancer risks to the individual most exposed is 5-in-1 million, based on both actual and allowable emissions. Based on this low cancer risk level and in consideration of other health measures and factors, including the cancer incidence (one case in every 250 years) and the low maximum non-cancer risk level (TOSHI of 0.004 based on actual emissions), we propose that the risks from the Chromium Anodizing source category are acceptable.

b. Ample Margin of Safety

Although we are proposing that the risks from these source categories are acceptable, risk estimates for individuals in the exposed population are above 1-in-1 million. Consequently, we considered whether the MACT standard provides an ample margin of safety. As part of this analysis, we investigated available emissions control options that might reduce the risk associated with chromium compound emissions from the nationwide estimated 1,770 hard chromium electroplating, decorative chromium electroplating, and chromium anodizing operations. Once we identified the available emissions control options, we estimated the cost of these options and

estimated the emission reduction associated with each control option. To determine controlled baseline emissions nationwide, assumptions were made about the numbers and types of emission control technologies in use, and the control efficiencies achieved by those technologies. The distribution of emission control methods among the various types of chromium electroplating plants and plant sizes was estimated based on general knowledge of the industry. Table A.7 summarizes the nationwide costs and cost-effectiveness of these regulatory control options.

TABLE A.7—COSTS OF CONTROL OPTIONS FOR CHROMIUM ELECTROPLATING

Type of facility	Control option	Number of affected facilities	Emission reduction (TPY)	Capital costs ($million)	Annualized costs ($million/yr)	Cost-effectiveness ($million/ton)	MIR after control (in-1-million)
Large hard chromium electroplating.	HEPA filter retrofit	132	1.0	35.1	18.4	36.3	6
Small hard chromium electroplating.	HEPA filter retrofit	658	0.4	66.0	33.9	59.3	6
	CMP retrofit	392	0.2	36.6	11.1	33.1	10
Decorative chromium electroplating.	HEPA filter retrofit	740	0.1	109.0	47.8	486	4
	CMP retrofit	644	[1] 0.05	63.1	17.1	367	10
Chromium anodizing	HEPA filter retrofit	240	0.02	43.9	17.9	895	< 1
	CMP retrofit	198	[1] 0.009	22.9	5.6	649	2

[1] Based on an estimated control efficiency of 99.9 percent.

For large hard chromium electroplating facilities, we evaluated the costs and emissions reductions associated with retrofitting existing tanks with HEPA filters. For small hard chromium electroplating facilities, we evaluated the same HEPA filter retrofit option, and also the option of retrofitting CMP systems on all tanks currently controlled with packed bed scrubbers. Retrofitting HEPA filters on existing tanks at large hard chromium electroplating plants would reduce nationwide emissions of chromium compounds by an estimated 1.0 TPY from the estimated baseline level of 1.10 TPY. The estimated capital and annualized costs for this option would be $35,100,000 and $18,430,000, respectively. The cost-effectiveness would be $36,300,000 per ton of HAP emissions reduced. Retrofitting HEPA filters on existing tanks at small hard chromium electroplating plants would reduce nationwide emissions of chromium compounds by an estimated 0.40 TPY from the estimated baseline level of 0.42 TPY. The estimated capital and annualized costs for this option would be $65,980,000 and $33,860,000, respectively. The cost-effectiveness would be $59,300,000 per ton of HAP emissions reduced. Retrofitting CMP systems on all tanks currently controlled with packed bed scrubbers at small hard chromium electroplating plants would reduce nationwide emissions of chromium compounds by an estimated 0.19 TPY from the estimated baseline level of 0.37 TPY. The estimated capital and annualized costs for this option would be $36,640,000 and $11,050,000, respectively. The cost-effectiveness would be $33,100,000 per ton of HAP emissions reduced. The Benzene NESHAP emphasize the need to consider "costs and the economic impacts of control," which implies some knowledge of affordability (54 FR 38046). The cost of the control options for hard chromium electroplating would impact over half of these facilities with estimated cost to sales ratios ranging from 8 percent to 22 percent. A cost to sales ratio greater than 3 percent may have a significant impact, including plant closure for many of these facilities.

These additional control requirements would reduce the maximum lifetime individual cancer risk from the Hard Chromium Electroplating source category to approximately 4-in-1 million, based on actual emissions. We estimate that, considering MACT-allowable emissions levels, the maximum lifetime individual cancer risk from the Hard Chromium Electroplating source category would be reduced to approximately 6-in-1 million. The cancer incidence would be reduced to approximately 0.05 and the estimated number of people exposed higher than 1-in-1 million would be about 1 million.

For decorative chromium electroplating, we evaluated the options of retrofitting HEPA filters on all existing tanks and the option of retrofitting CMP systems on the existing tanks that currently are not equipped with add-on control devices. Retrofitting HEPA filters on all existing decorative chromium electroplating tanks would reduce nationwide emissions of chromium compounds by an estimated 0.098 TPY from the estimated baseline level of 0.10 TPY. The estimated capital and annualized costs for this option would be $108,970,000 and $47,800,000, respectively. The cost-effectiveness would be $486,000,000 per ton of HAP emissions reduced. Retrofitting CMP systems on all decorative chromium electroplating tanks that currently do not have add-on controls would reduce nationwide emissions of chromium compounds by an estimated 0.05 TPY from the estimated baseline level of 0.10 TPY. The estimated capital and annualized costs for this option would be $63,100,000 and $17,100,000, respectively. The cost-effectiveness for this option would be $367 million per ton of HAP emissions reduced. The additional control requirements for HEPA filters would reduce the maximum lifetime individual cancer risk from the Decorative Chromium Electroplating source category to approximately 4-in-1 million, based on actual emissions. Because we believe the actual emissions are essentially the same as the MACT-allowable emissions for the Decorative Chromium Electroplating source category, we estimate no difference between the risks from the allowable emission level and the actual emission level.

For chromium anodizing, we evaluated the options of retrofitting HEPA filters on all existing tanks and the option of retrofitting CMP systems on the existing tanks that currently are not equipped with add-on control devices. Retrofitting HEPA filters on all existing chromium anodizing tanks

would reduce nationwide emissions of chromium compounds by an estimated 0.020 TPY from the estimated baseline level of 0.021 TPY. The estimated capital and annualized costs for this option would be $43,860,000 and $17,900,000, respectively. The cost-effectiveness would be $895,000,000 per ton of HAP emissions reduced. Retrofitting CMP systems on all chromium anodizing tanks that currently do not have add-on controls would not significantly reduce emissions. The estimated capital and annualized costs for this option would be $22,900,000 and $5,600,000, respectively. The cost-effectiveness for this option would be $649 million per ton of HAP emissions reduced. The additional control requirements for HEPA filters would reduce the maximum lifetime individual cancer risk from the Chromium Anodizing source category to less than 1-in-1 million, based on actual emissions. Because we believe the actual emissions are essentially the same as the MACT-allowable emissions for the Chromium Anodizing source category, we estimate the risk reduction based on allowable emissions to be the same as that for the actual emissions.

Our risk analysis results show cancer risks to the individual most exposed of 70-in-1 million and 5-in-1 million based on actual and MACT-allowable emissions, respectively, for the Decorative Chromium Electroplating and Chromium Anodizing source categories. For both of these categories, the cancer incidence is less than 0.01 cases per year. For decorative chromium electroplating, the number of people exposed to a cancer risk of 1-in-1 million or more is approximately 390,000. For chromium anodizing, the number of people exposed to a cancer risk of 1-in-1 million or more is approximately 2,700.

For the Hard Chromium Electroplating source category, our risk analysis shows cancer risks to the individual most exposed are 70-in-1 million based on actual emissions levels and 90-in-1 million based on MACT-allowable emissions. The cancer incidence for this source category could be as high as 0.8 cases per year, and could be over 14 million people exposed to cancer risks of 1-in-1 million or greater due to emissions from hard chromium electroplating sources using highly conservative assumptions. As we stated previously, we believe we overestimated hard chromium electroplating emissions, the number of plants that perform hard chromium electroplating, and, therefore, that the risks from the resulting analyses are also overstated. Our supplemental risk analysis for this source category indicates a cancer incidence of 0.1 cases per year and 360,000 people exposed to cancer risks of greater than 1-in-1-million. This analysis indicates that the risk levels in the assessment are highly uncertain and err on the side of being conservative.

Our analyses also show that, for these source categories, there is no potential for an adverse environmental effect or human health multipathway effects, and that acute and chronic non-cancer health impacts are unlikely. Our additional analysis of facility-wide risks showed that the maximum facility-wide cancer risk is 90-in-1 million, and that the maximum chronic non-cancer risks are unlikely to cause health impacts. Our additional analysis of the demographics of the exposed population shows that minorities face disproportionate risk from exposure to emissions from this category

We do not believe there is a significant risk reduction from the housekeeping measures we are proposing under CAA section 112(d)(6). However, we are requesting information on any risk reductions from these housekeeping practices and whether we should consider adopting these practices under CAA section 112(f)(2).

We considered all these factors in our ample margin of safety decision, and concluded that the costs of the options analyzed are not reasonable considering the emissions reductions and cancer health benefits potentially achievable with the controls. As a result, we propose that the existing MACT standard provides an ample margin of safety (considering cost, technical feasibility, and other factors) to protect public health for all three of these source categories. Thus, we are proposing to re-adopt the existing MACT standard to satisfy section 112(f) of the CAA.

While we propose that the existing MACT standard for the Hard Chromium Electroplating source category is acceptable and provides an ample margin of safety, we are proposing additional requirements under CAA section 112(d)(6), as discussed below. Notwithstanding our proposal that the risks are acceptable, we remain concerned that up to 14.2 million people may be exposed to cancer risks of 1-in-1 million or greater, and that there are disparities in risks for some demographic groups. While we are rejecting the option of adding HEPA filters or CMP as not cost-effective, we are specifically requesting comment on whether there are any cost-effective controls that may be able to reduce these risks. In particular, we are requesting States to identify any controls they have already required for these facilities, any controls they are currently considering, or any other controls of which they may be aware. We are also soliciting comment on whether our cost estimates for these options are accurate and whether these controls may be more cost-effective.

In summary, we propose that the risks posed by these source categories are acceptable. We are also proposing that the current MACT standard provides an ample margin of safety to protect public health based on our conclusion that the controls available are not cost-effective in light of the additional health protection the controls would provide. Thus, we are proposing to re-adopt the existing MACT standard to satisfy section 112(f) of the CAA.

5. What is our proposed decision on the technology review?

To evaluate developments in practices, processes, and control technologies for the chromium electroplating source categories, several activities were performed. Public comments received on the proposed 2002 amendments to the Chromium Electroplating MACT standards (67 FR 38810, June 5, 2002) were reviewed to determine whether they identified any developments in practices, processes, or control technologies that warrant further consideration. A review was performed of the supporting documentation for the 2007 amendments to California's Airborne Toxic Control Measure (ATCM) for Chromium Plating and Chromium Anodizing Facilities. Finally, searches of the RBLC and the Internet were conducted to identify other practices, processes, or control technologies that could be applied to chromium electroplating.

The 2004 amendments to the Chromium Electroplating MACT standards addressed three specific technology developments that occurred following promulgation of the original MACT standard: The use of WAFS for hard chromium electroplating emission control; instrumental differences in surface tension measurements for demonstrating compliance with electroplating bath surface tension limits; and enclosing hoods for electroplating tanks. Because those technology developments have already been addressed and we are not aware of any improvements to them, they are not discussed further. The following paragraphs describe all developments in practices, processes, and control technologies that we identified and that

were thus considered for the technology review, along with our conclusions.

a. Emission Elimination Device

An emission elimination device (EED), which is also referred to as a "Merlin cover," consists of a tank cover that includes a porous membrane that allows gases to escape, but captures droplets and mist emanating from the electroplating tank. While these tank covers are available, we do not believe any chromium electroplating or anodizing facilities are currently using an EED due to the impracticality of covering the electroplating tank while plating is underway. Because these devices are not known to be used in this industry and because it is unclear that they are feasible for these operations, we concluded that it is not necessary to revise the MACT standard to require this control under section 112(d)(6). However, we request comment on tanks or processes in which an EED could practicably be used by chromium electroplating or anodizing facilities.

b. HEPA Filters

Although HEPA filters have been on the market for decades, they were not considered to be a practical control method for electroplating tank emissions when the MACT standards were developed due to potential problems with clogging and the availability of several other types of mist eliminator technologies that had been proven to be effective in reducing emissions from electroplating tanks. However, in the past decade, facilities in California have increasingly used HEPA filters to meet the emission limits of the State's ATCM for Chromium Plating and Chromic Acid Anodizing Facilities. In October 2007, the California Air Resources Board (CARB) amended the ATCM to further tighten emission limits and to require HEPA filters on all new chromium electroplating and anodizing tanks. In those applications, HEPA filters act as a second stage of control, with the first stage generally consisting of a mesh pad mist eliminator or other device that removes large particles from the exhaust stream prior to the HEPA filter. Discussions with State and local agency staff in California indicate no technological problems with using HEPA filters for chromium electroplating emissions control. As part of this technology review, HEPA filters have been considered as a possible control option for sources subject to the Chromium Electroplating MACT standards. The costs of requiring HEPA filters were estimated, and are discussed above in section V.A.4.b of this preamble. In light of the high cost of this option as compared with the risk reductions it would achieve, we are proposing that it is not necessary to revise the MACT standard under section 112(d)(6) to require HEPA filters. However, we request comment on whether we should require HEPA filters for new source MACT.

c. Wetting Agent Fume Suppressants (WAFS)

The MACT standard allows the use of WAFS as a compliance alternative for meeting the applicable emission limit. WAFS are used in most decorative chromium electroplating and chromium anodizing tanks and in many hard chromium electroplating tanks for emission control. Historically, the most effective types of WAFS have been based on perfluorooctyl sulfonate (PFOS). The PFOS-based WAFS used in the chromium electroplating industry are part of a family of chemical compounds categorized as long-chain perfluorinated chemicals (PFC). As noted in a 2010 California Office of Health Hazard Assessment report, *Perfluorooctane sulfonate (PFOS) and Its Salts and Transformation and Degradation Precursors,*[34] these compounds have persistent, bioaccumulative, and toxic characteristics and are a particular concern for children's health.

Over the last several years there have been developments associated with the use of WAFS as a compliance alternative. There are now several types of WAFS on the market that do not include PFOS chemicals and have been proven effective for use in hard chromium and decorative chromium electroplating baths that we believe are cost-effective. Furthermore, these non-PFOS WAFS are not associated with any known adverse health effects. Although the non-PFOS WAFS have not been used extensively in the chromium anodizing industry, we are not aware of any technical reasons to preclude their use and effectiveness for chromium anodizing baths. However, we seek comment on this, as well as on our assessment that their use is cost-effective. Because of the adverse non-air quality health and environmental impacts associated with using PFOS-based WAFS (*i.e.,* the increasing concern over the presence of long-chain PFC in the environment), we are proposing under CAA section 112(d)(6) to revise the scope of the compliance alternative to no longer allow the addition of PFOS-based WAFS to tanks as a control method for these source categories. We solicit comment on all aspects of this change, including the non-air quality health and environmental impacts associated with using PFOS based WAFS.

For new sources, we are proposing that no PFOS-based WAFS could be used upon startup. For existing sources, we are proposing that no PFOS-based WAFS could be added to the electroplating or anodizing tanks beginning 3 years after promulgation of the final amendments; however, the tanks may continue operating with the remaining PFOS-based WAFS in them after that date until it is depleted. Under these amendments, these requirements would be specified in 40 CFR 63.342(c)(1)(iv) and (2)(vi) for hard chromium electroplating tanks, 40 CFR 63.342(d)(3) for decorative chromium electroplating and chromium anodizing tanks, and 40 CFR 63.342(e)(2) for decorative chromium electroplating tanks that use a trivalent chromium bath. A definition of PFOS-based fume suppressants also would be added to 40 CFR 63.341.

d. Housekeeping Procedures

We are also proposing under CAA section 112 (d)(6) to incorporate several housekeeping requirements into 40 CFR 63.342(f). In our review of the 2007 amendments to California's ATCM for Chromium Plating and Chromic Acid Anodizing Facilities, we found this rule required several housekeeping procedures that were not included in the housekeeping procedures required by the Chromium Electroplating MACT standards. These measures would potentially reduce fugitive chromium emissions from chromium electroplating and anodizing operations. In view of the implementation of these procedures in California and the potential for fugitive emissions reductions, we are proposing to add these procedures to the Chromium Electroplating MACT standards. The proposed housekeeping procedures would include storage requirements for any substance that contains hexavalent chromium as a primary ingredient; controls for the dripping of bath solution resulting from dragout; splash guards to minimize overspray and return bath solution to the electroplating or anodizing tank; a requirement to promptly clean up or contain all spills of any substance containing hexavalent chromium; requirements for the routine cleaning or stabilizing of storage and work surfaces, walkways, and other surfaces potentially contaminated with hexavalent chromium; a requirement to

[34] This report is available at *http://www.oehha.org/prop65/CRNR_notices/pdf_zip/070910_PFOS_CIC.pdf.*

install a barrier between all buffing, grinding, or polishing operations and electroplating or anodizing operations; and requirements for the storage, disposal, recovery, or recycling of chromium-containing wastes. The proposed housekeeping procedures would be listed in a new Table 2 to 40 CFR 63.342. In addition, this proposed action would require owners and operators to incorporate these housekeeping procedures in the facility Operation and Maintenance Plan specified in section 40 CFR 63.342(f)(3) and implement them, and a new definition would be added to 40 CFR 63.341(a) to clarify what is meant by the term "contains hexavalent chromium as a primary ingredient." The proposed compliance date for implementing the housekeeping procedures would be 6 months after promulgation of the final amendments.

6. What are the other actions we are proposing?

a. SSM Provisions

Consistent with *Sierra Club* v. *EPA,* EPA is proposing that standards in this rule would apply at all times. The existing MACT standards for these three source categories already specifies that the emission limitations apply "during periods of startup and shutdown" but not during malfunctions. We are proposing to revise this paragraph to remove the sentence indicating that the emission limitations do not apply during malfunctions. We are maintaining the malfunction-associated reporting and recordkeeping requirements in 40 CFR 63.346 and 40 CFR 63.347 with minor revisions. We are proposing to add language to 40 CFR 63.344(a) to clarify the conditions during which performance tests shall be conducted and to specify in Table 1 that the performance test specifications in 40 CFR 63.7(e)(1) of the *General Provisions* do not apply. We are also proposing to add a general duty provision to minimize emissions into 40 CFR 63.342(a)(1). In addition, we are proposing to promulgate an affirmative defense against civil penalties for exceedances of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense. EPA has attempted to ensure that we have not incorporated into the proposed regulatory language any provisions that are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether there are any such provisions that we have inadvertently incorporated or overlooked.

b. Rule Improvements

In addition, we identified the need for revisions of the standards to correct editorial errors, make clarifications, or address issues with implementation or determining compliance with the rule provisions.

Monitoring and Testing Requirements. We are proposing to revise 40 CFR 63.344(e), which addresses compliance provisions for multiple sources controlled by a common add-on air pollution control device. This section of the MACT standard references testing by Method 306, without any mention of Method 306A. Since Method 306A is an alternative to Method 306, we are proposing to revise section 40 CFR 63.344(e) to clarify that testing can be performed by either Method 306 or Method 306A.

To correct inconsistencies between the amendments made to 40 CFR part 63, subpart N in 2004 (69 FR 42885) and Method 306B, we are proposing to revise Method 306B, which specifies procedures for measuring the surface tension of chromium electroplating and anodizing baths. In addition, the proposed amendments would help to ensure that surface tension measurements made using stalagmometers are accurate. Under the proposed amendments, section 1.2 of Method 306B would be revised to clarify that the method also applies to hard chromium electroplating tanks. Section 11.1 would be revised to include procedures for checking the accuracy of, and cleaning, a stalagmometer before using the stalagmometer to measure surface tension. The proposed revisions to section 11.1 are consistent with the CARB ATCM for Hexavalent Chromium for Decorative and Hard Chrome plating and Chromic Acid Anodizing Facilities. Maintaining surface tension measuring devices is critical for obtaining accurate measurements. Method 306B currently references standard procedures for the use of tensiometers (ASTM Method D 1331–89), but not for the use of stalagmometers. The proposed amendment to section 11.1 would help to ensure that stalagmometers used to demonstrate compliance with surface tension limits are maintained and used properly. Finally, section 11.2 would be revised to account for the differences in surface tension limits, depending on the type of instrument used (tensiometer or stalagmometer).

Rule Corrections. To eliminate a discrepancy between the Chromium Electroplating MACT standards in subpart N of part 63 and the *General Provisions* in subpart A of part 63, this proposed action would also revise the trigger for semiannual compliance reports specified in 40 CFR 63.347(h)(2)(A) to be consistent with the trigger specified in the *General Provisions.* Subpart N currently provides that a semiannual report must be submitted if both the duration of excess emissions exceeds 1 percent of the source operating time and the duration of air pollution control device malfunctions exceeds 5 percent of the source operating time during the reporting period; however, 40 CFR 63.10(e)(3)(viii) of the *General Provisions* requires submitting a semiannual report if either condition occurs. We are proposing to revise 40 CFR part 63, subpart N to require semiannual reports to be submitted if either condition occurs.

B. What are the results and proposed decisions for the Group I Polymers and Resins Production source categories?

The National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins were promulgated on September 5, 1996 (62 FR 46925), and codified at 40 CFR part 63, subpart U. The Polymers and Resins I MACT standard applies to major sources and regulates HAP emissions from nine source categories: Butyl Rubber Production, Epichlorohydrin Elastomers Production, Ethylene Propylene Rubber Production, Hypalon™ Production, Neoprene Production, Nitrile Butadiene Rubber Production, Polybutadiene Rubber Production, Polysulfide Rubber Production, and Styrene Butadiene Rubber and Latex Production.

The Polymers and Resins I MACT standards regulate HAP emissions resulting from the production of elastomers (*i.e.,* synthetic rubber). An elastomer is a synthetic polymeric material that can stretch to at least twice its original length and then return rapidly to approximately its original length when released. Elastomers are produced via a polymerization/copolymerization process, in which monomers undergo intermolecular chemical bond formation to form a very large polymer molecule. Generally, the production of elastomers entails four processes: (1) Raw material (*i.e.,* solvent) storage and refining; (2) polymer formation in a reactor (either via the solution process, where monomers are dissolved in an organic solvent, or the emulsion process, where monomers are dispersed in water using a soap solution); (3) stripping and material recovery; and (4) finishing (*i.e.,* blending, aging, coagulation, washing, and drying).

Sources of HAP emissions from elastomers production include raw material storage vessels, front-end process vents, back-end process operations, wastewater operations, and equipment leaks. The "front-end" processes include pre-polymerization, reaction, stripping, and material recovery operations; and the "back-end" process includes all operations after stripping (predominately drying and finishing). Typical control devices used to reduce organic HAP emissions from front-end process vents include flares, incinerators, absorbers, carbon adsorbers, and condensers. In addition, hydrochloric acid formed when chlorinated organic compounds are combusted are controlled using scrubbers. Emissions from storage vessels are controlled by floating roofs or by routing them to a control device.

While emissions from back-end process operations can be controlled with control devices such as incinerators, the most common method of reducing these emissions is the pollution prevention method of reducing the amount of residual HAP that is contained in the raw product going to the back-end operations. Emissions from wastewater are controlled by a variety of methods, including equipment modifications (*e.g.,* fixed roofs on storage vessels and oil water separators; covers on surface impoundments, containers, and drain systems), treatment to remove the HAP (steam stripping, biological treatment), control devices, and work practices.

Emissions from equipment leaks are typically reduced by leak detection and repair work practice programs, and in some cases, by equipment modifications. Each of the seven Group I Polymers and Resins Production source categories addressed in this proposal are discussed further below.

1. Epichlorohydrin Elastomers Production

Epichlorohydrin Elastomers Production is one of the source categories for which we proposed RTR decisions on October 10, 2008.

a. Overview of the Source Category

Epichlorohydrin elastomers are prepared from the polymerization or copolymerization of epichlorohydrin or other monomers. Epichlorohydrin elastomers are produced by a solution polymerization process, typically using toluene as the solvent in the reaction. The main epichlorohydrin elastomers are polyepichlorohydrin, epi-ethylene oxide (EO) copolymer, epi-allyl glycidyl ether (AGE) copolymer, and epi-EOAGE terpolymer. Epichlorohydrin elastomers are widely used in the automotive industry.

We identified one currently operating epichlorohydrin elastomers production facility subject to the Polymers and Resins I MACT standard. Toluene accounts for the majority of the HAP emissions from the epichlorohydrin elastomers production processes at this facility (approximately 44 TPY and 99 percent of the total HAP emissions by mass). This facility also reported relatively small emissions of epichlorohydrin and ethylene oxide. The majority of HAP emissions are from back-end process vents (approximately 82 percent of the total HAP by mass). We estimate that the MACT-allowable emissions (*i.e.,* the maximum emission levels allowed if in compliance with the MACT standard) from this source category are approximately equal to the reported, actual emissions. For more detail about this estimate of the ratio of actual to MACT-allowable emissions, see the memo in the docket for this action describing the estimation of MACT-allowable emission levels and associated risks and impacts.

b. What data were used in our risk analyses?

We initially created a preliminary data set for the Epichlorohydrin Elastomers Production source category using information we collected directly from industry on emissions data and emissions release characteristics. We also reviewed the emissions and other data to identify data anomalies that could affect risk estimates. On March 29, 2007, we published an ANPRM (72 FR 29287) for the express purpose of requesting comments on and updates to this data set, as well as to the data sets for the other source categories addressed in that ANPRM. Comments received in response to the ANPRM were reviewed and considered, and we made adjustments to the data set where we concluded the comments supported such adjustment. After making appropriate changes to the data set based on this public data review process, the data set on which we based the initial proposal was created. This data set was used to conduct the risk assessment and other analyses for the Epichlorohydrin Elastomers Production source category that formed the basis for the proposed RTR included in the October 10, 2008, proposal.

We have continued to scrutinize the existing data set and have evaluated any additional data that became available subsequent to the October 10, 2008, proposal. Specific questions we had concerning current operations led us to develop a questionnaire and ask for updated emissions and emissions release characteristics information. This information was requested from the facility in May 2010 using the authority of section 114 of the CAA. We updated our data set for this source category based on the information received through this request.

c. What are the results of the risk assessments and analyses?

We have conducted a revised inhalation risk assessment for the Epichlorohydrin Elastomers Production source category. We have also conducted an assessment of facility-wide risk, and performed a demographic analysis of population risks. Table B.1.1 provides an overall summary of the results of the revised inhalation risk assessment.

TABLE B.1.1—EPICHLOROHYDRIN ELASTOMERS PRODUCTION REVISED INHALATION RISK ASSESSMENT RESULTS *

Number of facilities[1]	Maximum individual cancer risk (in 1 million)[2]		Population at risk ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic non-cancer TOSHI[3]		Maximum off-site acute non-cancer HQ[4]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
1	10	10	800	0.0001	0.1	0.1	HQ_{REL} = 0.2 epichlorohydrin

* All results are for impacts out to 50 km from every source in the category.

[1] Number of facilities evaluated in the risk analysis.

[2] Maximum individual excess lifetime cancer risk.

[3] Maximum TOSHI. The target organ with the highest TOSHI for the Epichlorohydrin Elastomer Production source category is the respiratory system.

[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which, in most cases, is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute threshold. See section IV.A. of this preamble for explanation of acute threshold values.

The inhalation risk modeling was performed using actual emissions level data. As shown in Table B.1.1, the results of the revised inhalation risk assessment indicated the maximum lifetime individual cancer risk could be as high as 10-in-1 million, the maximum chronic non-cancer TOSHI value could be as high as 0.1, and the maximum off-facility-site acute HQ value could be as high as 0.2, based on the actual emissions level and the REL value for epichlorohydrin. The total estimated national cancer incidence from these facilities based on actual emission levels is 0.0001 excess cancer cases per year, or one case in every 10,000 years.

Based on our analysis, we believe that actual emissions approximate emissions allowable under the MACT standard. Therefore, the risk results for MACT-allowable emissions are approximately equal to those for actual emissions. For more detail about the estimate of the ratio of actual to MACT-allowable emissions, see the memo in the docket for this action describing the estimation of MACT-allowable emission levels and associated risks and impacts.

There were no reported emissions of PB–HAP; therefore, we do not expect potential for human health multipathway risks or adverse environmental impacts.

Table B.1.2 displays the results of the facility-wide risk assessment. This assessment was conducted based on actual emission levels.

TABLE B.1.2—EPICHLOROHYDRIN ELASTOMERS PRODUCTION FACILITY-WIDE RISK ASSESSMENT RESULTS

Maximum facility-wide individual cancer risk (in 1 million)	10
Epichlorohydrin Elastomer Production source category contribution to this maximum facility-wide individual cancer risk [1]	100%
Maximum facility-wide chronic non-cancer TOSHI	0.1
Epichlorohydrin Elastomer Production source category contribution to this maximum facility-wide non-cancer TOSHI [1]	100%

[1] Percentage shown reflects Epichlorohydrin Elastomer Production source category contribution to the maximum facility-wide risks at the facility with the maximum risk value shown.

As shown in Table B.1.2, the maximum individual cancer risk from all HAP emissions at the one facility that contains epichlorohydrin elastomers production processes subject to the Group I Polymers and Resins MACT standard is estimated to be 10-in-1 million, and the maximum chronic non-cancer TOSHI value is estimated to be 0.1. The estimated proportion of the risk attributable to Epichlorohydrin Elastomers Production source category processes at this facility is approximately 100 percent for cancer risks and 100 percent for chronic non-cancer risk.

The results of the demographic analyses performed to investigate the distribution of risks above 1-in-1 million, based on actual emissions levels for the population living within 5 km of the facilities, among various demographic groups are provided in a report available in the docket for this action and summarized in Table B.1.3 below.

TABLE B.1.3—EPICHLOROHYDRIN ELASTOMERS DEMOGRAPHIC RISK ANALYSIS RESULTS

Emissions basis	Maximum risk (in 1 million)	Population with risk greater than 1-in-1 million							
		Total (millions)	Minority %	African American %	Other and multiracial %	Hispanic or Latino %	Native American %	Below the poverty level %	Over 25 W/O a HS diploma %
Nationwide	n/a	285	25	12	12	14	0.9	13	13
Source Category	10	0.0008	54	53	1	1	0.4	20	11
Facility-wide	10	0.01	52	50	2	1	0.2	23	14

The results of the demographic analysis show that, for the Epichlorohydrin Elastomers Production source category, of the population of 800 people with cancer risk greater than 1-in-1 million, 54 percent could be classified as a "Minority," 53 percent are included the "African-American" demographic group, and 20 percent are included the "Below Poverty Level," demographic group. The percentage of the population within 5 km of a epichlorohydrin elastomers production facility and with a cancer risk greater than 1-in-1 million is higher than expected for these demographic categories based on the typical distribution of these demographic groups across the United States. The table also shows that the results of the demographic analysis for the facility-wide emissions are similar to the results for the source category.

Details of these assessments and analyses can be found in the residual risk documentation as referenced in section IV.A. of this preamble, which is available in the docket for this action.

d. What are our proposed decisions on risk acceptability and ample margin of safety?

October 2008 Proposed Decision. In our October 10, 2008, proposal, we proposed that the risks 0f 30-in-1 million were acceptable because the risks results indicated that cancer risks to the individual most exposed to emissions from the category were greater than 1-in-1 million, but less than 100-in-1 million. We then analyzed other risk factors in the ample margin of safety determination. In this analysis, we proposed that emissions from the source category posed no potential for

an adverse environmental effect, did not pose potential for human health multipathway risks, and were unlikely to cause acute or chronic non-cancer health impacts. We also identified one emissions control option that would reduce risks. We proposed that such control was not necessary to protect public health with an ample margin of safety in light of the high cost and limited addition health protection it would provide. Therefore, we proposed that the existing standard provided an ample margin of safety and proposed to re-adopt the existing MACT standard to satisfy section 112(f) of the CAA.

Risk Acceptability. The revised risk analysis we performed for this proposal indicates that the cancer risks to the individual most exposed is 10-in-1 million based on both actual and MACT-allowable emissions. The cancer incidence and the number of people exposed to cancer risks of 1-in-1 million or greater are not significantly changed from the risk identified in the October 2008 proposal. Similarly, the risk analysis continued to show no potential for an adverse environmental effect or human health multipathway effects, and that acute or chronic non-cancer health impacts are unlikely. Our additional analysis of facility-wide risks showed that the maximum facility-wide cancer risk is 10-in-1 million and that the maximum chronic non-cancer risks are unlikely to cause health impacts. Our additional analysis of the demographics of the exposed population shows disparities in risks between demographic groups for the 800 people exposed at risks of 1-in-1 million. Based on this low cancer risk level and in consideration of other health measures and factors, including the low cancer incidence (one case in every 10,000 years) and the low maximum non-cancer risk level (TOSHI of 0.1), we propose that the risks from the Epichlorohydrin Elastomers Production are acceptable.

Ample Margin of Safety. Because we are proposing that the risks are acceptable, but still above 1-in-1 million, we then reconsidered our 2008 ample margin of safety decision. We have not identified any additional control options or any changes to the previously analyzed control option. Our analysis does not indicate a change in the emissions reductions that could be achieved or the cost of control for the control option considered in the October 2008 proposal. Therefore, we continue to propose that the current MACT standard provides an ample margin of safety to protect public health and the environment, and we are proposing to re-adopt the existing MACT standard to satisfy section 112(f) of the CAA.

e. What are our proposed decisions on the technology review?

In the October 10, 2008 proposal, we identified no advancements in practices, processes, and control technologies applicable to the emission sources in the Group I Polymers and Resins Production source categories in our technology review, and we proposed to re-adopt the existing MACT standard to satisfy section 112(d)(6) of the CAA. In that review, we examined the regulatory requirements and/or technical analyses for subsequently promulgated air toxics regulations with similar types of emissions sources as those in the Group I Polymers and Resins Production source categories, and we conducted a search of the RBLC for controls for VOC- and HAP-emitting processes in the Group I Polymers and Resins Production source categories. We have not identified any additional developments in practices, processes, and control technologies since the proposal date for the Epichlorohydrin Elastomers Production source category. Thus, we are proposing that it is not necessary to revise the MACT standard pursuant to section 112(d)(6) of the CAA.

f. What other actions are we proposing?

SSM Provisions. We are proposing to eliminate the SSM exemption in the Group 1 Polymers and Resins MACT standard. Consistent with *Sierra Club* v. *EPA,* EPA is proposing that standards in this rule would apply at all times. We are proposing several revisions to 40 CFR part 63, subpart U. Specifically, we are proposing to revise Table 1 to indicate that the requirements of 40 CFR 63.6(e) of the *General Provisions* do not apply. The 40 CFR 63.6(e) requires owner or operators to act according to the general duty to "operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions." We are separately proposing to incorporate this general duty to minimize into 40 CFR 63.483(a). The 40 CFR 63.6(e) also requires the owner or operator of an affected source to develop a written SSM plan. We are proposing to remove the SSM plan requirement. We are proposing to remove the explanation of applicability of emissions standards during periods SSM in 40 CFR 63.480(j); remove the malfunction plan from 40 CFR 63.482 and revise the definition of initial start-up to remove references to malfunctions in this section; clarify that representative conditions do not include periods of SSM throughout the rule; remove references to periods of SSM in monitoring; and revise the SSM-associated recordkeeping and reporting requirements in 40 CFR 63.506 to require reporting and recordkeeping for periods of malfunction. We are also proposing to revise Table 1 to indicate that SSM-related provisions in 40 CFR 63.6(f)(1), 40 CFR 63.7(e)(1), and 40 CFR 63.10(d)(5)(i) of the *General Provisions* do not apply. In addition, we are proposing to promulgate an affirmative defense against civil penalties for exceedances of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense.

EPA has attempted to ensure that we have not incorporated into proposed regulatory language any provisions that are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether there are any such provisions that we have inadvertently incorporated or overlooked.

Significant Emission Points Not Previously Regulated Review. We identified the absence of a limit for a significant emissions source within the provisions of the Group I Polymers and Resins MACT standard that apply to the Epichlorohydrin Elastomers Production source category. Specifically, there are no back-end process operation emission limits for this source category.[35] As these processes are major sources of emissions for the one facility in the source category, we are proposing to set standards for back-end process operations under CAA section 112(d)(2) and (d)(3) in this action.

As there is only one facility in the source category, the emissions level currently being achieved by this facility represents the MACT floor. The annual HAP emissions from the back-end process operations at this facility are approximately 36 TPY of toluene. There are two separate dryer vents, one emitting around 24 TPY of toluene, and the other emitting around 12 TPY of toluene. Neither of these vents is controlled. Therefore, we have determined that the MACT floor for these processes is 36 TPY based on the current level of HAP stripping and recovery, given current production levels, but which would fluctuate proportionally with an increase or decrease in production levels.

As part of our beyond-the-floor analysis, we considered alternatives

[35] Note that these uncontrolled emissions were included in the baseline risk assessment.

more stringent than the MACT floor option. We identified one option using add-on emission controls that would require the ducting of emissions from the back-end process operations to a control device, such as an incinerator. This option would also require an initial performance test of the incinerator and continuous parameter monitoring averaged daily. The capital costs of this option are estimated to be approximately $600,000 and the total annual costs are estimated to be approximately $1,100,000. We estimate that an incinerator would achieve an emissions reduction of 98 percent, resulting in a HAP decrease of approximately 35 TPY, with a cost-effectiveness of approximately $31,000/ton. Table B.2.4 summarizes the cost and emission reduction impacts of the proposed options. Because the reduction in HAP would be due to toluene, no reduction of cancer risk would result from this control option.

TABLE B.1.4—EPICHLOROHYDRIN ELASTOMER PRODUCTION FACILITY BACK-END OPTIONS IMPACTS

Regulatory alternatives	HAP emissions (TPY HAP)	Capital cost ($million)	Annual cost ($million/yr)	Cost-effectiveness as compared to baseline
				$/Ton HAP Removed
Baseline	36			
1 (MACT floor)	36	0	0	
2 (Beyond-the-floor)	1	0.6	1.1	31,000

In addition to the cost and emission reduction impacts shown in Table B.1.4, we estimate that the beyond-the-floor option would result in increases in criteria pollutant and carbon dioxide emissions (PM − 0.2 TPY, SO_2 − 0.03 TPY, NO_X − 12 TPY, CO − 2 TPY, and CO_2 − 7,000 TPY), and an increase in energy use of approximately 117,000 million British thermal units (BTU)/year at a cost of approximately $33,000/year.

We believe that the costs and other impacts of this beyond-the-floor option are not reasonable, given the level of emission reduction. Therefore, we are proposing an emission standard that reflects the MACT floor option. We are requesting comment on this analysis and these options.

As noted above, we are proposing that the MACT standard, prior to the implementation of the proposed emission limitation to the back-end process operations discussed in this section, provides an ample margin of safety to protect public health. Therefore, we maintain that after the new standard's implementation, the rule will continue to provide an ample margin of safety to protect public health. Consequently, we do not believe it will be necessary to conduct another residual risk review under CAA section 112(f) for this source category 8 years following promulgation of new back-end process limitations, merely due to the addition of this new MACT requirement.

2. Polybutadiene Rubber Production

Polybutadiene Rubber Production is one of the source categories for which we proposed RTR decisions on October 10, 2008.

a. Overview of the Source Category

Polybutadiene rubber is a homopolymer of 1,3-butadiene (*i.e.,* 1,3-butadiene is the only monomer used in the production of this polymer). While both the solution and emulsion polymerization processes can be used to produce polybutadiene rubber, all currently operating facilities in the United States use a solution process. In the solution process, the reaction is conducted in an organic solvent (hexane, toluene, or a non-HAP organic solvent), which helps to dissipate heat generated by the reaction and control the reaction rate. While polybutadiene rubber is the primary product at these facilities, styrene-butadiene rubber can also be produced as a minor product by adding styrene as a monomer. Most of the polybutadiene rubber manufactured in the United States is used in the production of tires in the construction of the tread and sidewalls. Polybutadiene rubber is also used as a modifier in the production of other polymers and resins (*e.g.,* polystyrene).

We identified five currently operating polybutadiene rubber production facilities subject to the Polymers and Resins I MACT standard. Some of these facilities are located at plant sites that also have other HAP-emitting sources regulated under separate MACT standards, which have been or will be addressed in separate regulatory actions. Three of the polybutadiene rubber production facilities use hexane as the solvent in their solution process, one facility uses toluene as its solvent, and the fifth uses a non-HAP organic solvent. Overall, hexane and toluene account for the majority of the HAP emissions from this source category (approximately 1,600 TPY hexane, which represents 70 percent of the total HAP emissions by mass, and 500 TPY toluene, which represents 23 percent). The facilities in this source category also reported emissions of styrene, 1,3-butadiene, ethylbenzene, and relatively minor quantities of other HAP. The majority of HAP emissions are from back-end process operations (approximately 70 percent of the total HAP by mass). For all emission sources except the back-end process operations, the actual emissions level is representative of the MACT-allowable level. For back-end process operations, we estimate that MACT-allowable emissions from this source category could be as high as seven times the actual emissions. Because these back-end limitations are production-based, this estimate was made by comparing the actual emissions levels to the emissions calculated using the limitations and production levels. For more detail about the estimate of the ratio of actual to MACT-allowable emissions, see the memo in the docket for this action describing the estimation of MACT-allowable emission levels and associated risks and impacts.

b. What data were used in our risk analyses?

We initially created a preliminary data set for the Polybutadiene Rubber Production source category using information we collected directly from industry on emissions data and emissions release characteristics. We also reviewed the emissions and other data to identify data anomalies that could affect risk estimates. On March 29, 2007, we published an ANPRM (72 FR 29287) for the express purpose of requesting comments on, and updates

to, this data set, as well as to the data sets for the other source categories addressed in that ANPRM. Comments received in response to the ANPRM were reviewed and considered. We made adjustments to the data set where we concluded the comments supported such adjustment. After making appropriate changes to the data set based on this public data review process, the data set on which we based the initial proposal was created. This data set was used to conduct the risk assessment and other analyses for the Polybutadiene Rubber Production source category that formed the basis for the proposed actions included in the October 10, 2008, proposal. We have continued to scrutinize the data set and any additional data that have become available since the October 10, 2008, proposal.

c. What are the results of the risk assessments and analyses?

We have conducted a revised inhalation risk assessment for the Polybutadiene Rubber Production source category. We have also conducted an assessment of facility-wide risk and performed a demographic analysis of population risks. Table B.2.1 provides an overall summary of the results of the revised inhalation risk assessment.

TABLE B.2.1—POLYBUTADIENE RUBBER REVISED INHALATION RISK ASSESSMENT RESULTS *

Number of facilities[1]	Maximum individual cancer risk (in 1 million)[2]		Population at risk ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic non-cancer TOSHI[3]		Maximum off-site acute non-cancer HQ[4]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
5	30	30	24,000	0.003	0.3	0.3	HQ_{REL} = 1 toluene

* All results are for impacts out to 50 km from every source in the category.
[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the Polybutadiene Rubber Production source category is the reproductive system.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which, in most cases, is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute threshold. See section IV.A. of this preamble for explanation of acute threshold values.

The inhalation risk modeling was performed using actual emissions level data. As shown in Table B.2.1, the results of the revised inhalation risk assessment indicated the maximum lifetime individual cancer risk could be as high as 30-in-1 million, the maximum chronic non-cancer TOSHI value could be up to 0.3, and the maximum off-facility-site acute HQ value could be as high as 1, based on the actual emissions level and the REL value for toluene. The total estimated national cancer incidence from these facilities based on actual emission levels is 0.003 excess cancer cases per year, or one case in every 333 years.

Our analysis of potential differences between actual emission levels and emissions allowable under the MACT standard indicated that MACT-allowable emission levels are equal to actual emissions for all emissions sources other than back-end process operations and may be up to seven times greater than actual emission levels for back-end process operations. When these ratios of actual to MACT-allowable emissions are applied to each emission source type, the result is that the cancer risks at the MACT-allowable level are equal to those at the actual level shown in Table B.2.1.

There were no reported emissions of PB–HAP; therefore, we do not expect potential for human health multipathway risks or adverse environmental impacts.

Table B.2.2 displays the results of the facility-wide risk assessment. This assessment was conducted based on actual emission levels.

TABLE B.2.2—POLYBUTADIENE RUBBER PRODUCTION FACILITY-WIDE RISK ASSESSMENT RESULTS

Maximum facility-wide individual cancer risk (in 1 million)	30
Polybutadiene Rubber Production source category contribution to this maximum facility-wide individual cancer risk)[1]	100%
Maximum facility-wide chronic non-cancer TOSHI	0.3
Polybutadiene Rubber Production source category contribution to this maximum facility-wide non-cancer TOSHI[1]	100%

[1] Percentage shown reflects Polybutadiene Rubber Production source category contribution to the maximum facility-wide risks at the facility with the maximum risk value shown.

The maximum individual cancer risk from all HAP emissions at a facility that contains polybutadiene rubber production processes subject to the Group I Polymers and Resins MACT standard is estimated to be 30-in-1 million, and the maximum chronic non-cancer TOSHI value is estimated to be 0.3. At the facilities where these maximum risk values occur, the estimated proportion of the risk attributable to the Polybutadiene Rubber Production source category processes is 100 percent for both cancer and non-cancer risk.

The results of the demographic analyses performed to investigate the distribution of risks above 1-in-1 million, based on actual emissions levels for the population living within 5 km of the facilities, among various demographic groups are provided in a report available in the docket for this action and summarized in Table B.2.3 below.

TABLE B.2.3—POLYBUTADIENE RUBBER DEMOGRAPHIC RISK ANALYSIS RESULTS

Emissions basis	Maximum risk (in 1 million)	Population with risk greater than 1-in-1 million							
		Total (millions)	Minority %	African American %	Other and multiracial %	Hispanic or Latino %	Native American %	Below the poverty level %	Over 25 W/O a HS diploma %
Nationwide	n/a	285	25	12	12	14	0.9	13	13
Source Category	30	0.017	11	6	4	4	0.5	11	13
Facility-wide	30	0.02	12	7	5	4	0.5	12	14

The results of the Polybutadiene Rubber Production source category demographic analysis show that the percentage of the population within 5 km of a polybutadiene rubber production facility and with a cancer risk greater than 1-in-1 million is less than the distribution of these demographic groups across the United States as displayed in Table B.2.3, with the exception of those "Over 25 Without a High School Diploma", where the levels are equal to the distribution of these demographic groups across the United States. The table also shows that the facility-wide emissions demographic analysis shows similar results.

Details of these assessments and analyses can be found in the residual risk documentation as referenced in section IV.A of this preamble, which is available in the docket for this action.

d. What are our proposed decisions on risk acceptability and ample margin of safety?

October 2008 Proposed Decision. In our October 10, 2008 proposal, we proposed that the risks were acceptable because the risks results indicated that cancer risks to the individual most exposed to emissions from the category were 10-in-1 million which is greater than 1-in-1 million but less than 100-in-1 million. We then analyzed other risk factors in the ample margin of safety determination. In this analysis, we proposed that emissions from the source category posed no potential for an adverse environmental effect, did not pose potential for human health multipathway risks, and were unlikely to cause acute or chronic non-cancer health impacts. We also identified two emissions control options that would reduce risks. We proposed that these controls were not necessary to protect public health with an ample margin of safety in light of the high cost and limited addition health protection they would provide. Therefore, we proposed that the existing standard provided an ample margin of safety and proposed to re-adopt the existing MACT standard to satisfy section 112(f) of the CAA.

Risk Acceptability. The revised risk analysis we performed for this proposal indicates that the cancer risks to the individual most exposed is 30-in-1 million based on both actual and MACT-allowable emissions. The cancer incidence and the number of people exposed to cancer risks of 1-in-1 million or greater are not significantly changed from the risk identified in the October 2008 proposal. Similarly, the risk analysis continued to show no potential for an adverse environmental effect or human health multipathway effects, and that chronic non-cancer health impacts are unlikely. The revised assessment did indicate that an acute non-cancer HQ as high as 1 could occur, based on the REL value at an area adjacent to the facility fenceline. Our additional analysis of facility-wide risks showed that the maximum facility-wide cancer risk is 30-in-1 million and that the maximum chronic non-cancer risks are unlikely to cause health impacts. Our additional analysis of the demographics of the exposed population suggests there are no disparities in risks for the various demographic groups. Based on this low cancer risk level and in consideration of other health measures and factors, including the low cancer incidence (one case in every 333 years) and the low maximum non-cancer risk level (TOSHI of 0.3), we propose that the risks from the Polybutadiene Rubber Production source category are acceptable.

Ample Margin of Safety. Because we are proposing that the risks are acceptable, but still above 1-in-1 million, we then re-considered our 2008 ample margin of safety decision. We have not identified any additional control options or any changes to the previously analyzed control option. Our analysis does not indicate a change in the emissions reductions that could be achieved or the cost of control for the control option considered in the October 2008 proposal. Therefore, we continue to propose that the current MACT standard provides an ample margin of safety to protect public health and the environment, and we are proposing to re-adopt the existing MACT standard to satisfy section 112(f) of the CAA.

e. What are our proposed decisions on the technology review?

In the October 10, 2008 proposal, we identified no advancements in practices, processes, and control technologies applicable to the emission sources in the Group I Polymers and Resins Production source categories in our technology review, and we proposed to re-adopt the existing MACT standard to satisfy section 112(d)(6) of the CAA. In that review we examined the regulatory requirements and/or technical analyses for subsequently promulgated air toxics regulations with similar types of emissions sources as those in the Group I Polymers and Resins Production source categories, and we conducted a search of the RBLC for controls for VOC- and HAP-emitting processes in the Group I Polymers and Resins Production source categories. We have not identified any additional developments in practices, processes, and control technologies since the proposal date for the Polybutadiene Rubber Production source category. In addition, we have not identified the need for revisions of the standards to correct editorial errors, make clarifications, or address issues with implementation or determining compliance with the rule provisions. Thus, we are continuing to propose to re-adopt the existing MACT standard to satisfy section 112(d)(6) of the CAA.

f. What other actions are we proposing?

The proposed changes to the SSM provisions for the Group I Polymers and Resins MACT, which apply to the Polybutadiene Rubber Production source category, are discussed above in section V.B.1.f.

3. Styrene Butadiene Rubber and Latex Production

Styrene Butadiene Rubber and Latex Production is one of the source categories for which we proposed RTR decisions on October 10, 2008.

a. Overview of the Source Category

Styrene butadiene rubber and latex are elastomers prepared from styrene and butadiene monomer units. The source category is divided into three subcategories due to technical process and HAP emission differences: (1) The production of styrene butadiene rubber by emulsion, (2) the production of styrene butadiene rubber by solution, and (3) the production of styrene butadiene latex. Styrene butadiene rubber is coagulated and dried to produce a solid product, while latex is a liquid product. For both styrene butadiene rubber processes, the monomers used are styrene and butadiene; either process can be conducted as a batch or a continuous process. These elastomers are commonly used in tires and tire-related products. We identified three currently operating styrene butadiene rubber production facilities using the emulsion process and three styrene butadiene rubber latex production facilities subject to the Polymers and Resins I MACT standard. Other than the polybutadiene plants that produce styrene butadiene rubber as a minor product, we did not identify any styrene butadiene rubber produced in a solution process. Some of these facilities are located at plant sites that also have other HAP-emitting sources regulated under separate MACT standards, for which we have addressed or will address in future rulemaking actions. Overall, styrene accounts for the majority of the HAP emissions from these facilities (approximately 276 TPY and 90 percent of the total HAP emissions by mass). These facilities also reported relatively small emissions of other HAP. The majority of HAP emissions are from back-end process operations (approximately 78 percent of the total HAP by mass). For all emission sources except the back-end process operations, the actual emissions level is representative of the MACT-allowable level. For back-end process operations, we estimate that MACT-allowable emissions from this source category could be as high as four times the actual emissions. Since these back-end limitations are production-based, this estimate was made by comparing the actual emissions levels to the emissions calculated using the limitations and production levels. For more detail about the estimate of the ratio of actual to MACT-allowable emissions, see the memo in the docket for this action describing the estimation of MACT-allowable emission levels and associated risks and impacts.

b. What data were used in our risk analyses?

We initially created a preliminary data set for the Styrene Butadiene Rubber and Latex Production source category using information we collected directly from industry on emissions data and emissions release characteristics. We also reviewed the emissions and other data to identify data anomalies that could affect risk estimates. On March 29, 2007, we published an ANPRM (72 FR 29287) for the express purpose of requesting comments on and updates to this data set, as well as to the data sets for the other source categories addressed in that ANPRM. Comments received in response to the ANPRM were reviewed and considered, and we made adjustments to the data set where we concluded the comments supported such adjustment. After making appropriate changes to the data set based on this public data review process, the data set on which we based the initial proposal was created. This data set was used to conduct the risk assessment and other analyses for the Styrene Butadiene Rubber and Latex Production source category, which formed the basis for the proposed RTR actions included in the October 10, 2008 proposal.

We have continued to scrutinize the existing data set and have evaluated any additional data that became available subsequent to the October 2008 proposal. Specific questions we had concerning current operations led us to develop a questionnaire and ask for updated emissions and emissions release characteristics information. This information was requested from the facilities in May 2010 using the authority of section 114 of the CAA. We updated our data set for this source category based on the information received through this request.

c. What are the results of the risk assessments and analyses?

We have conducted a revised inhalation risk assessment for the Styrene Butadiene Rubber and Latex Production source category. We have also conducted an assessment of facility-wide risk and performed a demographic analysis of population risks. Table B.3.1 provides an overall summary of the results of the revised inhalation risk assessment.

TABLE B.3.1—STYRENE BUTADIENE RUBBER AND LATEX PRODUCTION REVISED INHALATION RISK ASSESSMENT RESULTS *

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Population at risk ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic non-cancer TOSHI [3]		Maximum off-site acute non-cancer HQ [4]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
6	10	10	25,000	0.004	0.2	0.2	HQ_{REL} = 0.4 styrene.

* All results are for impacts out to 50 km from every source in the category.
[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the Styrene Butadiene Rubber and Latex Production source category is the reproductive system.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which, in most cases, is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute threshold. See section IV.A. of this preamble for explanation of acute threshold values.

The inhalation risk modeling was performed using actual emissions level data. As shown in Table B.3.1, the results of the revised inhalation risk assessment indicated the maximum lifetime individual cancer risk could be as high as 10-in-1 million, the maximum chronic non-cancer TOSHI value could be up to 0.2, and the maximum off-facility-site acute HQ value could be as high as 0.4, based on the actual emissions level and the REL value for styrene. The total estimated national cancer incidence from these facilities based on actual emission levels is 0.004 excess cancer cases per year, or one case in every 250 years.

Our analysis of potential differences between actual emission levels and emissions allowable under the MACT standard indicated that MACT-

allowable emission levels are equal to actual emissions for all emissions sources other than back-end process operations. While the emissions may be up to four times greater than actual emission levels for back-end process operations, the compounds emitted do not have cancer potency values so this potential increase in emissions does not effect risk. When these ratios of actual to MACT-allowable emissions are applied to each emission source type, the result is that the cancer risks at the MACT-allowable level are equal to those at the actual level shown in Table B.3.1.

There were no reported emissions of PB–HAP; therefore, we do not expect potential for human health multipathway risks or adverse environmental impacts.

Table B.3.2 displays the results of the facility-wide risk assessment. This assessment was conducted based on actual emission levels.

TABLE B.3.2—STYRENE BUTADIENE RUBBER AND LATEX PRODUCTION FACILITY-WIDE RISK ASSESSMENT RESULTS

Maximum facility-wide individual cancer risk (in 1 million)	70
Styrene Butadiene Rubber and Latex Production source category contribution to this maximum facility-wide individual cancer risk [1]	5%
Maximum facility-wide chronic non-cancer TOSHI	1
Styrene Butadiene Rubber and Latex Production source category contribution to this maximum facility-wide non-cancer TOSHI [1]	10%

[1] Percentage shown reflects the Styrene Butadiene Rubber Production source category contribution to the maximum facility-wide risks at the facility with the maximum risk value shown.

As shown in Table B.3.2, the maximum individual cancer risk from all HAP emissions at a facility that contains styrene butadiene rubber and latex production processes subject to the Group I Polymers and Resins MACT standard is estimated to be 70-in-1 million, and the maximum chronic non-cancer TOSHI value is estimated to be 1. At the facilities where these maximum risk values occur, the estimated proportion of the risk attributable to Styrene Butadiene Rubber and Latex Production source category processes is approximately 5 percent for cancer risks and 10 percent for chronic non-cancer risk. Both the cancer and non-cancer risks at this facility are primarily due to a nitrile butadiene rubber process, which has recently closed.

The results of the demographic analyses performed to investigate the distribution of risks above 1-in-1 million, based on actual emissions levels for the population living within 5 km of the facilities, among various demographic groups are provided in a report available in the docket for this action and summarized in Table B.3.3 below.

TABLE B.3.3—STYRENE BUTADIENE RUBBER AND LATEX PRODUCTION DEMOGRAPHIC RISK ANALYSIS RESULTS

Emissions basis	Maximum risk (in 1 million)	Population with risk greater than 1-in-1 million							
		Total (millions)	Minority %	African American %	Other and multiracial %	Hispanic or Latino %	Native American %	Below the poverty level %	Over 25 W/O a HS diploma %
Nationwide	n/a	285	25	12	12	14	0.9	13	13
Source Category	10	0.02	40	3	36	54	0.6	18	24
Facility-wide	70	0.1	50	29	20	32	0.5	23	20

The results of the Styrene Butadiene Rubber and Latex Production source category demographic analysis show that of the population with cancer risk greater than 1-in-1 million, 40 percent could be classified as a "Minority," 54 percent are included in the "Hispanic or Latino" demographic group, 36 percent are included in the "Other and Multiracial," demographic group, 18 percent are included in the "Below Poverty Level," and 24 percent are included in the "Over 25 Without a High School Diploma" demographic group. These percentages of the population within 5 km of a styrene butadiene rubber and latex production facility and with a cancer risk greater than 1-in-1 million is higher than the percentages for these demographic categories based on the distribution of these demographic groups across the United States. The table also shows that the results of the facility-wide demographic analysis are higher than the national percentages for the those that could be classified as a "Minority" and for those included in the "Hispanic or Latino," "African American," "Other and Multiracial," "Below Poverty Level," and the "Over 25 Without a High School Diploma" demographic groups.

Details of these assessments and analyses can be found in the residual risk documentation as referenced in section IV.A of this preamble, which is available in the docket for this action.

d. What are our proposed decisions on risk acceptability and ample margin of safety?

October 2008 Proposed Decision. In our October 10, 2008 proposal, we proposed that the risks were acceptable because the risks results of 7-in-1 million indicated that cancer risks to the individual most exposed to emissions from the category were greater than 1-in-1 million but less than 100-in-1 million. We then analyzed other risk factors in the ample margin of safety determination. In this analysis, we proposed that emissions from the source category posed no potential for an adverse environmental effect, did not pose potential for human health multipathway risks, and were unlikely to cause acute or chronic non-cancer health impacts. We also identified one emissions control option that would reduce risks. We proposed that such control was not necessary to protect public health with an ample margin of safety in light of the high cost and limited addition health protection it would provide. Therefore, we proposed that the existing standard provided an

ample margin of safety and proposed to re-adopt the existing MACT standard to satisfy section 112(f) of the CAA.

Risk Acceptability. The revised risk analysis we performed for this proposal indicates that the cancer risks to the individual most exposed is 10-in-1 million based on both actual and MACT-allowable emissions. The cancer incidence and the number of people exposed to cancer risks of 1-in-1 million or greater are not significantly changed from the risk identified in the October 2008 proposal. Similarly, the risk analysis continued to show no potential for an adverse environmental effect or human health multipathway effects, and that chronic non-cancer health impacts are unlikely. The revised assessment indicated that an acute non-cancer HQ as high as 0.4 could occur, based on the REL value. Our additional analysis of facility-wide risks showed that the maximum facility-wide cancer risk is 70-in-1 million and the maximum facility-wide non-cancer TOSHI is 1. It also showed that the styrene butadiene rubber production processes located at the facilities with these maximum risk values contribute approximately 5 and 10 percent to such risks, respectively. Our additional analysis of the demographics of the exposed population may show disparities in risks between demographic groups. Based on this low cancer risk level and in consideration of other health measures and factors, including the low cancer incidence (one case in every 250 years) and the low maximum non-cancer risk level (TOSHI of 0.2), we propose that the risks from the Styrene Butadiene Rubber and Latex Production source category are acceptable.

Ample Margin of Safety. Because we are proposing that the risks are acceptable, but still above 1-in-1 million, we then re-considered our 2008 ample margin of safety decision.

We have not identified any additional control options or any changes to the previously analyzed control option to reduce risks. Our analysis does not indicate a change in the emissions reductions that could be achieved or the cost of control for the control option considered in the October 2008 proposal. Therefore, we continue to propose that the current MACT standard provides an ample margin of safety to protect public health and the environment, and we are proposing to re-adopt the existing MACT standard to satisfy section 112(f) of the CAA.

e. What are our proposed decisions on the technology review?

In the October 10, 2008 proposal, we identified no advancements in practices, processes, and control technologies applicable to the emission sources in the Group I Polymers and Resins Production source categories in our technology review, and we proposed to re-adopt the existing MACT standard to satisfy section 112(d)(6) of the CAA. In that review we examined the regulatory requirements and/or technical analyses for subsequently promulgated air toxics regulations with similar types of emissions sources as those in the Group I Polymers and Resins I Production source categories, and we conducted a search of the RBLC for controls for VOC- and HAP-emitting processes in the Group I Polymers and Resins Production source categories. We have not identified any additional developments in practices, processes, and control technologies since the proposal date for the Styrene Butadiene Rubber and Latex Production source category. Thus, we are continuing to propose to re-adopt the existing MACT standard to satisfy section 112(d)(6) of the CAA.

f. What other actions are we proposing?

The proposed changes to the SSM provisions for the Group I Polymers and Resins MACT, which apply to the Styrene Butadiene Rubber and Latex Production source category, are discussed above in section V.B.1.f.

4. Nitrile Butadiene Rubber Production

Nitrile Butadiene Rubber Production is one of the source categories for which we proposed RTR decisions on October 10, 2008.

a. Overview of the Source Category

Nitrile butadiene rubber is a copolymer of 1,3-butadiene and acrylonitrile, and the Nitrile Butadiene Rubber Production source category includes any facility that polymerizes 1,3-butadiene and acrylonitrile. While nitrile butadiene rubber is the primary product at these facilities, styrene-butadiene rubber can also be produced as a minor product by substituting styrene for acrylonitrile as a monomer. Depending on its specific composition, nitrile butadiene rubber can be resistant to oil and chemicals, a property that facilitates its use in disposable gloves, hoses, seals, and a variety of automotive applications.

We identified one nitrile butadiene rubber production facility currently subject to the Polymers and Resins I MACT standard. This facility is at a plant site that also has other HAP-emitting sources that are regulated under separate MACT standards, for which we have addressed or will address in future rulemaking actions. Acrylonitrile and 1,3-butadiene account for the HAP emissions from this source category (approximately 2 TPY). The majority of HAP emissions are from back-end process operations (approximately 97 percent of the total HAP by mass) for this source category. We estimate that MACT-allowable emissions from this source category are approximately equal to reported, actual emissions. For more detail about this estimate of the ratio of actual to MACT-allowable emissions, see the memo in the docket for this action describing the estimation of MACT-allowable emission levels and associated risks and impacts.

b. What data were used in our risk analyses?

We initially created a preliminary data set for the Nitrile Butadiene Rubber Production source category using information we collected directly from industry on emissions data and emissions release characteristics. We also reviewed the emissions and other data to identify data anomalies that could affect risk estimates. On March 29, 2007, we published an ANPRM (72 FR 29287) for the express purpose of requesting comments and updates to this data set, as well as to the data sets for the other source categories addressed in that ANPRM. Comments received in response to the ANPRM were reviewed and considered, and we made adjustments to the data set where we concluded the comments supported such adjustment. After making appropriate changes to the data set based on this public data review process, the data set on which we based the initial proposal was created. This data set was used to conduct the risk assessment and other analyses for the Nitrile Butadiene Rubber Production source category, which formed the basis for the proposed RTR actions included in the October 10, 2008 proposal.

Since the proposal, we have continued to scrutinize the existing data set and have evaluated any additional data that became available subsequent to the October 10, 2008 proposal. Specific questions we had concerning current operations led us to develop a questionnaire and ask for updated emissions and emissions release characteristics information. This information was requested from the facility in May 2010 using the authority of section 114 of the CAA. We updated our data set for this source category based on the information received through this request.

c. What are the results of the risk assessments and analyses?

We have conducted a revised inhalation risk assessment for the Nitrile Butadiene Rubber Production source category. We have also conducted an assessment of facility-wide risk and performed a demographic analysis of population risks. Table B.4.1 provides an overall summary of the results of the revised inhalation risk assessment.

TABLE B.4.1—NITRILE BUTADIENE RUBBER PRODUCTION REVISED INHALATION RISK ASSESSMENT RESULTS *

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Population at risk ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic non-cancer TOSHI [3]		Maximum off-site acute non-cancer HQ [4]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
1	2	2	70	0.0004	0.009	0.009	HQ_{AEGL-1} = 0.002 acrylonitrile

* All results are for impacts out to 50 km from every source in the category.
[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the Nitrile Butadiene Rubber Production source category is the reproductive system.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which in most cases, is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute threshold. See section III.A of this preamble for explanation of acute threshold values.

The inhalation risk modeling was performed using actual emissions level data. As shown in Table B.4.1, the results of the revised inhalation risk assessment indicated the maximum lifetime individual cancer risk could be as high as 2-in-1 million, the maximum chronic non-cancer TOSHI value could be up to 0.009, and the maximum off-facility-site acute HQ value could be as high as 0.002, based on the actual emissions level and the AEGL–1 value for acrylonitrile. The total estimated national cancer incidence from these facilities based on actual emission levels is 0.0004 excess cancer cases per year, or one case in every 2,500 years.

Our analysis of potential differences between actual emission levels and emissions allowable under the MACT standard indicate that actual and allowable emissions are approximately the same. Therefore, the risk results for MACT-allowable emissions are equal to those for actual emissions.

There were no reported emissions of PB–HAP; therefore, we do not expect potential for human health multipathway risks or adverse environmental impacts.

Table B.4.2 displays the results of the facility-wide risk assessment. This assessment was conducted based on actual emission levels.

TABLE B.4.2—NITRILE BUTADIENE RUBBER PRODUCTION FACILITY-WIDE RISK ASSESSMENT RESULTS

Maximum facility-wide individual cancer risk (in 1 million)	5
Nitrile Butadiene Rubber Production source category contribution to this maximum facility-wide individual cancer risk [1]	33%
Maximum facility-wide chronic non-cancer TOSHI	0.03
Nitrile Butadiene Rubber Production source category contribution to this maximum facility-wide non-cancer TOSHI [1]	30%

[1] Percentage shown reflects Nitrile Butadiene Rubber Production source category contribution to the maximum facility-wide risks at the facility with the maximum risk value shown.

The maximum individual cancer risk from all HAP emissions at a facility that contains nitrile butadiene rubber production processes subject to the Group I Polymers and Resins MACT standard is estimated to be 5-in-1 million, and the maximum chronic non-cancer TOSHI value is estimated to be 0.03. The estimated proportion of the risk attributable to Nitrile Butadiene Rubber Production source category processes at this facility is approximately 33 percent for cancer risks and 30 percent for chronic non-cancer risk. This facility also has processes subject to the Group IV Polymers and Resins MACT standard, 40 CFR part 63, subpart JJJ.

The results of the demographic analyses performed to investigate the distribution of risks above 1-in-1 million, based on actual emissions levels for the population living within 5 km of the facilities, among various demographic groups are provided in a report available in the docket for this action and summarized in Table B.4.3 below.

TABLE B.4.3—NITRILE BUTADIENE RUBBER PRODUCTION DEMOGRAPHIC RISK ANALYSIS RESULTS

Emissions basis	Maximum risk (in 1 million)	Population with risk greater than 1-in-1 million							
		Total (millions)	Minority %	African American %	Other and multiracial %	Hispanic or Latino %	Native American %	Below the poverty level %	Over 25 W/O a HS diploma %
Nationwide	n/a	285	25	12	12	14	0.9	13	13
Source Category	2	0.00007	94	94	0	0	0	33	14
Facility-wide	5	0.006	95	93	2	0.4	0.1	23	17

The results of the demographic analysis show that, for the Nitrile Butadiene Rubber Production source category, of the population of 70 people with cancer risk greater than 1-in-1 million, 94 percent could be classified as a "Minority," 94 percent are included in the "African-American" demographic group, 33 percent are included in the "Below Poverty Level" demographic group, and 14 percent are included in the "Over 25 Without a High School Diploma" demographic group. The percentage of the population for these demographic categories within 5 km of a nitrile butadiene rubber production facility and with a cancer risk greater than 1-in-1 million is higher than distribution of these demographic groups across the United States. The table also shows that the results of the demographic analysis for the 6,000 people at cancer risk greater than 1-in-1 million from facility-wide emissions are similar to the results for the source category.

Details of these assessments and analyses can be found in the residual risk documentation as referenced in section IV.A of this preamble, which is available in the docket for this action.

d. What are our proposed decisions on risk acceptability and ample margin of safety?

October 2008 Proposed Decision. In our October 2008 proposal, we proposed that the risks were acceptable because the risks results indicated that cancer risks to the individual most exposed to emissions from the category of 60-in-1 million were greater than 1-in-1 million but less than 100-in-1 million. We then analyzed other risk factors in the ample margin of safety determination. In this analysis, we proposed that emissions from the source category posed no potential for an adverse environmental effect, did not pose potential for human health multipathway risks, and were unlikely to cause acute or chronic non-cancer health impacts. We also identified one emissions control option that would reduce risks. We proposed that such control was not necessary to protect public health with an ample margin of safety in light of the high cost and limited addition health protection it would provide. Therefore, we proposed that the existing standard provided an ample margin of safety and proposed to re-adopt the existing MACT standard to satisfy section 112(f) of the CAA.

Risk Acceptability. The revised risk analysis we performed for this proposal indicates that the cancer risks to the individual most exposed is 2-in-1 million based on both actual and MACT-allowable emissions. The cancer incidence and the number of people exposed to cancer risks of 1-in-1 million or greater are much less than the risk identified in the October 2008 proposal. Similarly, the risk analysis continued to show no potential for an adverse environmental effect or human health multipathway effects, and that acute or chronic non-cancer health impacts are unlikely. Our additional analysis of facility-wide risks showed that the maximum facility-wide cancer risk is 5-in-1 million and that the maximum chronic non-cancer risks are unlikely to cause health impacts. Our additional analysis of the demographics of the exposed population may show disparities in risks between demographic groups, but only for the 60 people at cancer risk greater than 1-in-1 million. Based on this low cancer risk level and in consideration of other health measures and factors, including the low cancer incidence (one case in every 2,500 years) and the low maximum non-cancer risk level (TOSHI of 0.009), we propose that the risks from the Nitrile Butadiene Rubber Production source category are acceptable.

Ample Margin of Safety. Because we are proposing that the risks are acceptable, but still above 1-in-1 million, we then re-considered our October 2008 ample margin of safety decision.

We have not identified any additional control options or any changes to the previously analyzed control option. Our analysis does not indicate a change in the emissions reductions that could be achieved or the cost of control for the control option considered in the October 2008 proposal. Therefore, we continue to propose that the current MACT standard provides an ample margin of safety to protect public health and the environment, and we are proposing to re-adopt the existing MACT standard to satisfy section 112(f) of the CAA.

e. What are our proposed decisions on the technology review?

In the October 10, 2008 proposal, we identified no advancements in practices, processes, and control technologies applicable to the emission sources in the Group I Polymers and Resins Production source categories in our technology review, and we proposed to re-adopt the existing MACT standard to satisfy section 112(d)(6) of the CAA. In that review we examined the regulatory requirements and/or technical analyses for subsequently promulgated air toxics regulations with similar types of emissions sources as those in the Group I Polymers and Resins Production source categories, and we conducted a search of the RBLC for controls for VOC- and HAP-emitting processes in the Group I Polymers and Resins Production source categories. We have not identified any additional developments in practices, processes, and control technologies since the proposal date for the Nitrile Butadiene Rubber Production source category. Thus, we are continuing to propose to re-adopt the existing MACT standard to satisfy section 112(d)(6) of the CAA.

f. What other actions are we proposing?

SSM Provisions. The proposed changes to the Group I Polymers and Resins MACT, which apply to the Nitrile Butadiene Rubber Production source category, are discussed above in section V.B.1.f.

Significant Emission Points Not Previously Regulated. We identified the absence of a standard for a significant emissions source in the category in the provisions of the Group I Polymers and Resins MACT standard that apply to the Nitrile Butadiene Rubber Production source category. Specifically, there are no back-end process operation emission limits for this source category.[36] As these processes are major sources of emissions for the one facility in the source category, we are proposing to set standards for back-end process operations under CAA section 112(d)(2) and (d)(3) in this action.

The emission limit we are proposing today represents the MACT floor level of control. As there is only one facility in the source category, the emissions limitation achieved by this facility is the MACT floor. The annual emissions from the back-end process operations at this facility are approximately 2 TPY. There are 11 separate dryer vents; one is controlled, while the others are uncontrolled. The controlled vent emits around 0.003 TPY of 1,3-butadiene and 0.002 TPY of acrylonitrile. The regenerative thermal oxidizer used on this vent achieves approximately 96 percent control of the acrylonitrile emissions, but no control of 1,3-butadiene. The collection of 10 uncontrolled vents emit around 0.8 TPY of 1,3-butadiene and 0.9 TPY of acrylonitrile.

As part of our beyond-the-floor analysis, we considered alternatives more stringent than the MACT floor option. We identified one option using add-on emission controls that would require the ducting of emissions from the currently uncontrolled back-end process operations emission source to a control device, such as an incinerator.

[36] Note that these uncontrolled emissions were included in the baseline risk assessment.

This option would also require an initial performance test of the incinerator and continuous parameter monitoring averaged daily. The capital costs of this option are estimated to be approximately $1,600,000 and the total annual costs are estimated to be approximately $11,400,000/year. We estimate that an incinerator would achieve an emissions reduction of 98 percent, resulting in a HAP decrease of approximately 1.7 TPY, with a cost-effectiveness of approximately $6,700,000/ton. Table B.4.4 summarizes the cost and emission reduction impacts of the proposed options.

TABLE B.4.4—NITRILE BUTADIENE RUBBER PRODUCTION FACILITY BACK-END OPTION IMPACTS

Regulatory alternatives	HAP emissions (TPY)	Capital cost (million $)	Annual cost (million $/yr)	Cost-effectiveness as compared to baseline (million $/ton HAP removed)
Baseline	1.7			
1 (MACT floor)	1.7	0	0	
2 (Beyond-the-floor)	0.04	1.6	11.4	6.7

In addition to the cost and emission reduction impacts shown in Table B.4.4, we estimate that the beyond-the-floor option will result in increases in criteria pollutant and carbon dioxide emissions (PM − 2 TPY, SO_2 − 0.4 TPY, NO_X − 133 TPY, CO − 23 TPY, and CO_2 − 80,000 TPY) and an increase in energy use of approximately 1,400,000 BTU/year at a cost of approximately $385,000/year.

We believe that the costs and other impacts of this beyond-the-floor option are not reasonable, given the level of emission reduction. Therefore, we are proposing Option 1, the MACT floor option. We are requesting comment on this analysis and these options.

As noted above, we are proposing that the MACT standard, prior to the implementation of the proposed emission limitation to the back-end process operations discussed in this section, provides an ample margin of safety to protect public health. Since the proposed emission limitation represents the existing level of control for the single plant in the source category, this proposed emission limitation will not have an impact on risk. Therefore, we maintain that after its implementation, the rule will continue to provide an ample margin of safety to protect public health. Consequently, we do not believe it will be necessary to conduct another residual risk review under CAA section 112(f) for this source category 8 years following promulgation of new back-end process limitations, merely due to the addition of this new MACT requirement.

5. Neoprene Rubber Production

Neoprene Rubber Production is one of the source categories for which we proposed and finalized RTR decisions on December 12, 2007 (72 FR 70543) and December 16, 2008 (73 FR 76220), respectively.

a. Overview of the Source Category

Neoprene is a polymer of chloroprene. Neoprene was originally developed as an oil-resistant substitute for natural rubber, and its properties allow its use in a wide variety of applications, including wetsuits, gaskets and seals, hoses and tubing, plumbing fixtures, adhesives, and other products. We have identified one neoprene rubber production facility currently subject to the Polymers and Resins I MACT standards.

For the Neoprene Rubber Production source category, we have proposed and finalized a decision not to revise the standards for those source categories based on our RTR. As noted above, this decision was proposed on December 12, 2007 and finalized on December 16, 2008. Since the Neoprene Production source category was determined to be "low risk" (maximum lifetime cancer risk less than 1-in-1 million), we did not believe it was necessary to conduct a facility-wide or demographic risk analysis. Therefore, we are not addressing the RTR in today's notice for this source category.

b. What other actions are we proposing?

SSM Provisions. The proposed changes to the Group I Polymers and Resins MACT, which apply to the Neoprene Rubber Production source category, are discussed above in section V.B.1.f.

Significant Emission Points Not Previously Regulated. We identified in the provisions of the Group I Polymers and Resins MACT standard that apply to the Neoprene Rubber Production source category the absence of a standard for a significant emissions source in the category. Specifically, there are no back-end process operation emission limits for this source category. As these processes are major sources of emissions for the one facility in the source category, we are proposing to set standards for back-end process operations under CAA sections 112(d)(2) and (3) in this action.

As there is only one facility in the source category, the emissions level currently being achieved by this facility represents the MACT floor. The annual emissions from the back-end process operations at this facility are approximately 14 TPY. There are 11 separate dryer vents collectively emitting around 14 TPY of toluene. None of the vents are controlled. Therefore, we have determined that the MACT floor for the back-end process is 14 TPY based on stripping and HAP recovery, given current production levels, but which would fluctuate proportionally with an increase or decrease in production levels.

As part of our beyond-the-floor analysis, we considered alternatives more stringent than the MACT floor option. We identified one option using add-on emission controls that would require the ducting of emissions from the back-end process operations to a control device, such as an incinerator. This option would also require an initial performance test of the incinerator and continuous parameter monitoring averaged daily. The capital costs of this option are estimated to be approximately $1,300,000 and the total annual costs are estimated approximately $4,800,000 per year. We estimate that an incinerator would achieve an emissions reduction of 98 percent, resulting in a HAP decrease of approximately 22.6 TPY, with a cost-effectiveness of approximately $213,000 per ton. Table B.5.1 summarizes the impacts of the proposed options.

TABLE B.5.1—NEOPRENE RUBBER PRODUCTION FACILITY BACK-END OPTION IMPACTS

Regulatory alternatives	HAP emissions (TPY)	Capital cost (million $)	Annual cost (million$/yr)	Cost-effectiveness as compared to baseline ($/ton HAP removed)
Baseline	23			
1 (MACT floor)	23	0	0	
2 (Beyond-the-floor)	0.5	1.3	4.8	213,000

In addition to the cost and emission reduction impacts shown in Table B.5.1, we estimate that the beyond-the-floor option will result in increases in criteria pollutant and carbon dioxide emissions (PM − 0.8, SO_2 − 0.2 TPY, NO_X − 55 TPY, CO − 10 TPY, and CO_2 − 33,000 TPY) and an increase in energy use of approximately 560,000 million BTU/year at a cost of approximately $159,000/year.

We believe that the costs and other impacts of this beyond-the-floor option are not reasonable, given the level of emission reduction. Therefore, we are proposing Option 1, the MACT floor option. We are requesting comment on this analysis and these options.

As noted above, we have proposed and finalized a decision that the MACT standard for neoprene rubber production, prior to the implementation of the proposed emission limitation to the back-end process operations discussed in this section, provides an ample margin of safety to protect public health. Since this source category was "low risk" prior to this proposed emission limitation, we maintain that after their implementation, the rule will continue to provide an ample margin of safety to protect public health. Consequently, we do not believe it will be necessary to conduct another residual risk review under CAA section 112(f) for this source category 8 years following promulgation of new back-end process limitations, merely due to the addition of this new MACT requirement.

6. Ethylene Propylene Rubber Production

Ethylene Propylene Rubber Production is one of the source categories for which we proposed and finalized RTR decisions on December 12, 2007 (72 FR 70543) and December 16, 2008 (73 FR 76220), respectively.

a. Overview of the Source Category

Ethylene propylene rubber is an elastomer prepared from ethylene and propylene monomers. Common uses for these elastomers include radiator and heater hoses, weather stripping, door and window seals for cars, construction plastics blending, wire and cable insulation and jackets, and single-ply roofing membranes.

For the Ethylene Propylene Rubber Production source category, we have proposed and finalized a decision not to revise the standards for this source category based on our RTR. As noted above, this decision was proposed on December 12, 2007 and finalized on December 16, 2008. Since the Ethylene Propylene Rubber Production source category was determined to be "low risk" (maximum lifetime cancer risk less than 1-in-1 million), we did not believe it was necessary to conduct a facility-wide or demographic risk analysis. Therefore, we are not addressing the RTR in this notice for this source category.

b. What other actions are we proposing?

SSM Provisions. The proposed changes to the SSM provisions for the Group I Polymers and Resins MACT, which apply to the Ethylene Propylene Rubber Production source category, are discussed above in section V.B.1.f.

Significant Emission Points Not Previously Regulated. We identified in the provisions of the Group I Polymers and Resins MACT standard that apply to the Ethylene Propylene Rubber Production source category the absence of a standard for a significant emissions source in the category. Specifically, the rule requires that emissions from Group 1 front-end process vents be routed to a control device that achieves 98 percent reduction in organic HAP emissions but does not require the control of hydrogen halides and halogens from the outlet of combustion devices. All three currently-operating facilities in this source category control the organic HAP emissions in accordance with the requirements in the rule (*i.e.,* reduce organic HAP emissions by 98 percent). This represents the MACT floor for this source category. However, one facility routes a chlorinated organic compound to a flare, which results in emissions of HCl that are not regulated by the current MACT requirements. When chlorinate organics are burned in a flare, there are variations in the combustion which likely results in the formation of combustion by-products. These combustion by-products could include trace chlorinated compounds such as dioxins and furans. Due to the level of HCl emissions resulting from the combustion of chlorinated organic compounds in Group 1 streams, we are proposing to require control of these HCl emissions for the Ethylene Propylene Rubber Production source category.

As part of our beyond-the-floor analysis, we considered alternatives to reduce these HCl emissions, which are more stringent than the MACT floor option. We identified the option of eliminating the exemption from the requirement to control hydrogen halides and halogens from the outlet of combustion devices. The one facility reports around 20 TPY of HCl emissions resulting from the combustion of chlorinated organic compounds in a flare. The other two facilities indicated that they do not emit any HCl emissions resulting from the combustion of chlorinated organic compounds. We estimated that the capital costs for the facility to replace the flare with an incinerator followed by a scrubber to reduce the HCl would be approximately $985,000 and the total annual costs are estimated to be approximately $446,000 per year. While there would be no additional reduction in organic HAP from this requirement, the HCl emissions would be reduced by 99 percent, or 19.6 TPY. The cost-effectiveness of this option would be approximately $21,000 per ton. However, this ethylene propylene rubber process is co-located with the halobutyl rubber process, which also vents a vent stream containing chlorinated organic compounds to a flare, resulting in HCl emissions. We estimated the costs of a single incinerator and scrubber to control the streams containing chlorinated organics from both the ethylene propylene rubber and halobutyl rubber processes. The estimated capital cost of this control scenario is $1,100,000 and the annual cost is $640,000 per year. This would still achieve the same HCl emission reduction from the ethylene propylene

rubber process (19.6 TPY), and the overall cost-effectiveness considering the reductions from the ethylene propylene rubber and halobutyl rubber would be around $6,700 per ton. Table B.6.1 summarizes the impacts of the proposed options.

TABLE B.6.1—ETHYLENE PROPYLENE RUBBER PRODUCTION FACILITY FRONT-END OPTIONS IMPACTS

Regulatory alternatives	HAP emissions (TPY HAP)	Capital cost ($million)	Annual cost ($million/yr)	Cost-effectiveness as compared to baseline ($/ton HAP removed)
Baseline	20			
1 (MACT floor)	20	0	0	
2 (Beyond-the-floor)	0.2	*1.1	*0.6	*6,700

*Assuming a shared control incinerator/scrubber combination is used for both the ethylene propylene rubber and halobutyl rubber processes.

In addition to the cost and emission reduction impacts shown in Table B.6.1, we estimate that the beyond-the-floor option will result in increases in criteria pollutant and carbon dioxide emissions (PM − 0.03 TPY, SO_2 − 0.006 TPY, NO_X − 2 TPY, CO − 0.4 TPY, and CO_2 − 1,200 TPY), the generation of approximately 29 million gallons/year of wastewater, and an increase in energy use of approximately 21,000 million BTU/year at a cost of approximately $7,000/year.

We believe that the costs and other impacts of this beyond-the-floor option are reasonable, given the level of emission reduction. Therefore, we are proposing Option 2, the beyond-the-floor option. We are requesting comment on this analysis and these options.

As noted above, we have proposed and finalized a decision that the MACT standard for ethylene propylene rubber production, prior to the implementation of the proposed emission limitation discussed in this section, provides an ample margin of safety to protect public health. Since this source category was "low risk" prior to this proposed emission limitation, we maintain that after its implementation, which will only further reduce HAP emissions, the rule will continue to provide an ample margin of safety to protect public health. Consequently, we do not believe it will be necessary to conduct another residual risk review under CAA section 112(f) for this source category 8 years following promulgation of new limitations, merely due to the addition of this new MACT requirement.

7. Butyl Rubber Production

Butyl Rubber Production is one of the source categories for which we proposed and finalized RTR decisions on December 12, 2007 (72 FR 70543) and December 16, 2008 (73 FR 76220), respectively.

a. Overview of the Source Category

The Butyl Rubber Production source category includes any facility that manufactures copolymers of isobutylene and isoprene. A typical composition of butyl rubber is approximately 97 percent isobutylene and 3 percent isoprene. Modified, derivative, and halogenated copolymers and latexes are also included in this source category. Butyl rubber is typically made by a precipitation (slurry) polymerization process in which isobutylene and isoprene are copolymerized in methyl chloride solvent. Butyl rubber is very impermeable to common gases and resists oxidation. Uses for butyl rubber include tires, tubes, and tire products; automotive mechanical goods; adhesives, caulks, and sealants; and pharmaceutical uses. A specialty group of butyl rubbers are halogenated butyl rubbers, which are produced commercially by dissolving butyl rubber in hydrocarbon solvent and contacting the solution with gaseous or liquid elemental halogens such as chlorine or bromine. For the purpose of the MACT standards, this source category is divided into two subcategories: butyl rubber and halobutyl rubber.

For the Butyl Rubber Production source category, we have proposed and finalized a decision not to revise the standards for this source category based on our RTR. As noted above, this decision was proposed on December 12, 2007 and finalized on December 16, 2008. Since the Butyl Rubber Production source category was determined to be "low risk" (maximum lifetime cancer risk less than 1-in-1 million), we did not believe it was necessary to conduct a facility-wide or demographic risk analysis. Therefore, we are not addressing the RTR in this notice for this source category.

b. What other actions are we proposing?

SSM Provisions. The proposed SSM changes to the Group I Polymers and Resins MACT, which apply to the Butyl Rubber Production source category, are discussed above in section V.B.1.f.

Significant Emission Points Not Previously Regulated. We identified in the provisions of the Group I Polymers and Resins MACT standard that apply to both Butyl Rubber Production subcategories the absence of standards for two significant emissions sources in each of the Butyl Rubber Production subcategories. Specifically, these situations are HCl emissions from front-end process vents and emissions from back-end process operations.

The rule requires that emissions from Group 1 front-end process vents be routed to a control device that achieves 98 percent reduction in organic HAP emissions but does not require the control of hydrogen halides and halogens from the outlet of combustion devices. Both facilities in these subcategories control the organic HAP emissions in accordance with the requirements in the rule (*i.e.,* reduce organic HAP emissions by 98 percent). This represents the MACT floor for these subcategories. However, these facilities route a chlorinated organic compound to a flare, which results in emissions of HCl that are exempted from the current MACT requirements. Due to the level of HCl emissions resulting from the combustion of chlorinated organic compounds in Group 1 streams, we are proposing to require control of these HCl emissions for both the Butyl Rubber Production and Halobutyl Rubber Production subcategories.

As there is only one facility in each subcategory, the existing level of control for organic HAP emissions represents the MACT floor. As part of our beyond-the-floor analysis, we considered alternatives to reduce the HCl emissions, which are more stringent than the MACT floor option. For front-end process vents, we identified the option of eliminating the exemption

from the requirement to control hydrogen halides and halogens from the outlet of combustion devices. The butyl rubber facility reported HCl emissions of 30.1 TPY, while the halobutyl rubber facility reported 76.8 TPY. Since scrubbers could not be installed on the outlet of these combustion devices to reduce the HCl emissions by 99 percent, the butyl rubber facility and the halobutyl rubber facility would need to install new incinerators followed by scrubbers to comply with this beyond-the-floor requirement. We estimate that the capital costs for this would be $669,000 for the butyl rubber facility and $984,000 for the halobutyl rubber facility. The total annual costs would be around $235,000 per year for the butyl rubber facility and $424,000 per year for the halobutyl rubber facility. Since there would be no additional reduction in organic HAP emissions from what is being achieved by the current controls, the only emission reduction would a 99 percent reduction in HCl emissions, or 29.8 TPY for the butyl rubber facility and 76 TPY for the halobutyl rubber facility. Thus, the cost-effectiveness of these beyond-the-floor options would be approximately $7,900 per ton for butyl rubber and $6,000 per ton for halobutyl rubber. However, this halobutyl rubber process is co-located with an ethylene propylene rubber process, which also vents a vent stream containing chlorinated organic compounds to a flare, resulting in HCl emissions. As these streams could be controlled using the same equipment at this facility, we estimated the costs of a single incinerator and scrubber to control the streams containing chlorinated organics from both the ethylene propylene rubber and halobutyl rubber processes. The estimated capital cost of this control scenario is $1,100,000 and the annual cost is $640,000 per year. This would still achieve the same HCl emission reduction from the halobutyl rubber process (76 TPY), and the overall cost-effectiveness considering the reductions from the ethylene propylene rubber and halobutyl rubber would be around $6,700 per ton. Tables B.7.1 and B.7.2 summarize the impacts of the proposed options.

TABLE B.7.1—BUTYL RUBBER PRODUCTION FACILITY FRONT-END OPTIONS IMPACTS

Regulatory alternatives	HAP emissions (TPY HAP)	Capital cost ($million)	Annual cost ($million/yr)	Cost-effectiveness as compared to baseline ($/ton HAP removed)
Baseline	30.1	.....	.....	.....
1 (MACT floor)	30.1	0	0	.....
2 (Beyond-the-floor)	0.3	0.6	0.2	$7,900

TABLE B.7.2—HALOBUTYL RUBBER PRODUCTION FACILITY FRONT-END OPTIONS IMPACTS

Regulatory alternatives	HAP emissions (TPY HAP)	Capital cost ($million)	Annual cost ($million/yr)	Cost-effectiveness as compared to baseline ($/ton HAP removed)
Baseline	76.8	.....	.....	.....
1 (MACT floor)	76.8	0	0	.....
2 (Beyond-the-floor)	0.8	*1.1	*0.6	*$6,700

*Assuming a shared control incinerator/scrubber combination is used for both the ethylene propylene rubber and halobutyl rubber processes.

In addition to the cost and emission reduction impacts shown in Table B.7.1 for butyl rubber production, we estimate that the beyond-the-floor option will result in increases in criteria pollutant and carbon dioxide emissions (PM − 0.004 TPY, SO_2 − 0.001 TPY, NO_X − 2 TPY, CO − 0.05 TPY, and CO_2 − 160 TPY), the generation of approximately 31 million gallons/year of wastewater, and an increase in energy use of around 3,000 million BTU/year at a cost of approximately $3,000/year.

In addition to the cost and emission reduction impacts shown in Table B.6.2 for halobutyl rubber production, we estimate that the beyond-the-floor option will result in increases in criteria pollutant and carbon dioxide emissions (PM − 0.03 TPY, SO_2 − 0.006 TPY, NO_X − 2 TPY, CO − 0.4 TPY, and CO_2 − 1,200 TPY), the generation of approximately 29 million gallons/year of wastewater, and an increase in energy use of around 21,000 million BTU/year at a cost of approximately $7,000/year.

We believe that the costs and other impacts of these beyond-the-floor options are reasonable, given the level of emission reduction. Therefore, we are proposing Option 2, the beyond-the-floor option, for both the Butyl Rubber Production and Halobutyl Rubber Production subcategories. We are requesting comment on this analysis and these options.

We also noted that there are no back-end process operation emission limits for either the Butyl Rubber Production or Halobutyl Rubber Production subcategories. As there is only one facility in each subcategory, the back-end process operations emissions level currently being achieved by these facilities represents the MACT floor. The annual emissions from the uncontrolled back-end process operations at the butyl rubber facility are approximately 26 TPY, and 35 TPY at the halobutyl facility. There are two separate dryer vent streams at the butyl rubber facility, with one stream controlled. The controlled stream emits around 28 TPY of hexane. The regenerative thermal oxidizer used to control emissions achieves approximately 98-percent control. There are four separate dryer vents at the halobutyl facility and one vent is controlled. The controlled vent emits around 18 TPY of hexane. The regenerative thermal oxidizer used to control emissions achieves approximately 97-percent control of the hexane emissions. The four uncontrolled vents collectively emit around 35 TPY of hexane. Therefore, we have determined that the MACT floors

for these processes are these emission levels, given current production levels, but which would fluctuate proportionally with an increase or decrease in production levels.

As part of our beyond-the-floor analysis, we considered alternatives more stringent than the MACT floor option. We identified one option using add-on emission controls that would require the ducting of emissions from the uncontrolled back-end process operations to a control device, such as an incinerator. This option would also require an initial performance test of the incinerator and continuous parameter monitoring averaged daily. For the Butyl Rubber Production subcategory, the capital costs of this option are estimated to be approximately $235,000 and the total annual costs are estimated to be approximately $181,000. For the Halobutyl Rubber Production subcategory, the capital costs of this option are estimated to be approximately $950,000 and the total annual costs are estimated to be approximately $1,600,000 per year. We estimate that an incinerator would achieve an emissions reduction of 98 percent, resulting in a HAP decrease of approximately 26 TPY for the Butyl Rubber Production subcategory and 34 for Halobutyl Rubber Production subcategory. The associated cost-effectiveness values would be approximately $7,000 per ton for Butyl Rubber Production subcategory and $47,000/ton for Halobutyl Rubber Production subcategory. Tables B.7.3 and B.7.4 summarize the impacts of the proposed options.

TABLE B.7.3—BUTYL RUBBER PRODUCTION SUBCATEGORY FACILITY BACK-END OPTION IMPACTS

Regulatory alternatives	HAP emissions (TPY HAP)	Capital cost ($million)	Annual cost ($million/yr)	Cost-effectiveness as compared to baseline ($/ton HAP removed)
Baseline	54			
1 (MACT floor)	54	0	0	
2 (Beyond-the-floor)	28	0.2	0.2	$7,000

TABLE B.7.4—HALOBUTYL RUBBER PRODUCTION SUBCATEGORY FACILITY BACK-END OPTION IMPACTS

Regulatory alternatives	HAP Emissions (TPY HAP)	Capital cost ($million)	Annual cost ($million/yr)	Cost-effectiveness as compared to baseline ($/ton HAP removed)
Baseline	53			
1 (MACT floor)	53	0	0	
2 (Beyond-the-floor)	19	1	1.6	$47,000

In addition to the cost and emission reduction impacts shown in Table B.7.3 for Butyl Rubber Production subcategory, we estimate that the beyond-the-floor option will result in increases in criteria pollutant and carbon dioxide emissions (PM − 0.01, SO_2 − 0.003 TPY, NO_X − 8 TPY, CO − 0.2 TPY, and CO_2 − 600 TPY) and an increase in energy use of approximately 10,000 million BTU/year at a cost of approximately $6,000/year.

In addition to the cost and emission reduction impacts shown in Table B.7.4 for Halobutyl Rubber Production subcategory, we estimate that the beyond-the-floor option will result in increases in criteria pollutant and carbon dioxide emissions (PM −0.25, SO_2 −0.05 TPY, NO_X −17 TPY, CO −3 TPY, and CO_2 −10,500 TPY) and an increase in energy use of approximately 170,000 million BTU/year at a cost of approximately $49,000/year.

We believe that the costs and other impacts of the beyond-the-floor option for back-end process operations for the Butyl Rubber Production subcategory are reasonable, given the level of emission reduction. Therefore, we are proposing Option 2 for the Butyl Rubber Production subcategory, the beyond-the-floor option. We are requesting comment on this analysis and these options.

We believe that the costs and other impacts of the beyond-the-floor option for the Halobutyl Rubber Production subcategory back-end process operations are not reasonable, given the level of emission reduction. Therefore, we are proposing Option 1, the MACT floor option. We are requesting comment on this analysis and these options.

As noted above, we have proposed and finalized a decision that the MACT standard for the Butyl Rubber Production source category, prior to the implementation of the proposed emission limitations to the front-end process vent and back-end process operations discussed in this section, provides an ample margin of safety to protect public health. Since both subcategories of this source category were "low risk" prior to these proposed emission limitations, we maintain that after their implementation, which will only further reduce HAP emissions, the rule will continue to provide an ample margin of safety to protect public health. Consequently, we do not believe it will be necessary to conduct another residual risk review under CAA section 112(f) for this source category 8 years following promulgation of new front-end process vent and back-end process limitations, merely due to the addition of these new MACT requirements.

C. What are the results and proposed decisions for the Marine Tank Vessel Loading Operations source category?

1. Overview of the Source Category and MACT Standards

The NESHAP for MTVLO were promulgated on September 19, 1995 (60 FR 48388), and codified at 40 CFR part 63, subpart Y. The MTVLO MACT-based standards apply to major sources and regulate HAP emissions from: Land-based terminals, off-shore terminals, and the Alyeska Pipeline Service Company's Valdez Marine Terminal.

MTVLO are conducted at terminals that load liquid commodities in bulk, such as crude oil, gasoline, and other fuels, and some chemicals and solvent mixtures. The cargo is pumped from the terminal's large, above-ground storage tanks through a network of pipes into a storage compartment (tank) on the vessel. Emissions occur as vapors are displaced from the tank as it is being filled. Most MTVLO facilities are either independent terminals or are associated with petroleum refineries or synthetic organic chemical manufacturers.

For purposes of the MTVLO analysis, we considered only emissions from those sources that are part of the MTVLO source category. We recognize that there are additional sources of emissions at these facilities that are not part of the MTVLO source category. Those emission sources include emissions from hatch leaks or J tubes during transit, lightering operations, ballasting wastewater from non-segregated ballasting, cleaning of the cargo tank (especially when changing products), and ventilating the cargo tank prior to loading. We are investigating these sources to understand their emissions and any controls used to reduce those emissions and request information about these sources that are currently not part of the MTVLO source category.

The primary emission sources of displaced vapors associated with MTVLO activities include open tank hatches and overhead vent systems. Other possible emission points are hatch covers or domes, pressure or vacuum relief valves, seals, and vents. The MACT standards require control of all displaced vapors that result from product loading at affected sources irrespective of the point from which those vapors are emitted. Typical control devices used to reduce HAP emissions at affected facilities include vapor collection systems routed to either combustion or recovery devices, such as flares, incinerators, absorbers, carbon adsorbers, and condensers.

When we developed the MTVLO MACT, we estimated that approximately 300 major source facilities with MTVLO would be subject to the MACT standards. However, data in the 2005 NEI were only available for 152 facilities subject to the MACT standards and the analyses discussed in this section are based on these 152 facilities. We believe the 152 facilities emit HAP that are representative of HAP emissions within the source category because, based on available information, we expect that the rest of the facilities in the source category generally emit the same HAP as do the 152 modeled facilities. In addition, we expect that these 152 terminals represent the larger-emitting terminals, based on the specific terminals included in the 2005 NEI and the average reported emissions from these terminals (2.8 TPY of HAP on average).

Marine terminals with MTVLO located at petroleum refineries are not part of the MTVLO source category, but are subject to the MTVLO MACT-based standards because the Refinery NESHAP, 40 CFR part 63, subpart CC, incorporate those requirements by reference. However, marine terminals that are part of the Petroleum Refineries source category were not included in this risk assessment because they are not in the MTVLO source category. For these reasons, we are proposing to exclude refineries from the additional control requirements that are being proposed in this action. Loading operations at marine terminals that are part of the Petroleum Refineries source category will be addressed in a separate RTR rulemaking action.

2. What data were used in our risk analyses?

We initially created a preliminary data set for the source category using data in the 2002 NEI Final Inventory, Version 1 (made publicly available on February 26, 2006), which we reviewed and changed where necessary to ensure that the proper facilities were included and that emissions from the proper processes were allocated to the MTVLO source category. We also reviewed the emissions and other data to identify data anomalies that could affect risk estimates. On March 29, 2007, we published an ANPRM (72 FR 29287) requesting comments on and updates to this data set, as well as the data sets for the other source categories included in the notice. Comments received in response to the ANPRM were reviewed and considered, and adjustments were made to the data set where we concluded the comments supported such adjustment. After making appropriate changes to the data set based on this public data review process, we created the data set on which we based the initial proposal. This data set was used to conduct the risk assessment and other analyses for the MTVLO source category that formed the basis for the actions included in the October 2008, proposal.

Since the initial October 2008 proposal, we have continued to scrutinize the existing data set and have evaluated all additional data that became available subsequent to the proposal. Uncertainty about possible changes in the industry led us to extract more recent data from the NEI and, ultimately, to replace the entire 2002 NEI–based MTVLO data set with a data set based on the 2005 NEI. Additionally, we continue to work with industry representatives to resolve data issues found with facilities modeled with a MIR above 1-in-1 million (discussed in the next section) using the 2005 NEI data. The industry's review to date is provided in the docket for public review and comment.

The 2005 NEI-based data set shows 420 TPY of total HAP emissions from the 152 modeled facilities in the data set. Hexane, methyl tertiary butyl ether, toluene, methanol, benzene, and xylenes account for the majority of the HAP emissions from loading operations included in the MTVLO source category at the 152 facilities in the data set (approximately 350 TPY, or 79 percent of the total HAP emissions by mass). These facilities also reported relatively small emissions of 56 other HAP.

3. What are the results of the risk assessments and analyses?

We have conducted a revised inhalation risk assessment for the MTVLO source category. We have also conducted an assessment of facility-wide risks and performed a demographic analysis of population risks. Table C.1 provides an overall summary of the results of the revised inhalation risk assessment.

TABLE C.1—MARINE TANK VESSEL LOADING OPERATIONS REVISED INHALATION RISK ASSESSMENT RESULTS *

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Population at risk ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic non-cancer TOSHI [3]		Maximum off-site acute non-cancer HQ [4]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
152 Modeled Facilities	20	60	71,000	0.01	0.3	0.9	HQ_{REL} = 1 benzene
300 Major Source Facilities Subject to the MTVLO MACT Standard.	20	60	140,000	0.02	0.3	0.9	HQ_{REL} = 1 benzene

* All results are for impacts out to 50 km from every source in the category.
[1] There were 152 facilities in the data set that were modeled. We believe that these facilities are representative of the entire source category and that the maximum risks arising from any individual facility in the source category are properly characterized. The population risks were scaled up based on a linear relationship.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the MTVLO source category is the reproductive system.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which, in most cases, is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute threshold. See section IV.A of this preamble for explanation of acute threshold values.

The inhalation risk modeling was performed using actual emissions level data. As shown in Table C.1, the results of the revised inhalation risk assessment indicate the maximum lifetime individual cancer risk could be as high as 20-in-1 million, the maximum chronic non-cancer TOSHI value could be up to 0.3. The total estimated national cancer incidence from these facilities based on actual emission levels at the 152 modeled facilities is 0.01 excess cancer cases per year or one case in every 100 years. The total estimated cancer incidence for the MTVLO source category could, however, be as high as 0.02, or one case in every 50 years, considering that there may be 300 facilities in the source category. The maximum off-facility-site acute HQ value could be as high as 1, based on the actual emissions level and the REL value for benzene.

In evaluating potential differences between actual emission levels and emissions allowable under the MACT-based standards, we investigated the specific controls in use at facilities associated with cancer risks greater than 1-in-1 million and determined that the highest factor for one of these facilities was 3.0, based on the ability of these facilities to achieve 98-percent control of emissions where only 97-percent emissions control is required by the MACT standards for another facility, they could, under MACT, increase emissions by a factor of 3. Therefore, the maximum individual cancer risk based on MACT-allowable emissions is estimated to be up to 60-in-1 million, and the maximum chronic non-cancer TOSHI value is up to 0.9.

Table C.2 displays the results of the facility-wide risk assessment. This assessment was conducted based on actual emission levels for the 152 modeled facilities.

TABLE C.2—MARINE TANK VESSEL LOADING OPERATIONS FACILITY-WIDE RISK ASSESSMENT RESULTS

Maximum facility-wide individual cancer risk (in 1 million)	200
MTVLO source category contribution to this maximum facility-wide individual cancer risk [1]	10%
Maximum facility-wide chronic non-cancer TOSHI	4
MTVLO source category contribution to this maximum facility-wide non-cancer TOSHI [1]	20%

[1] Percentage shown reflects MTVLO source category contribution to the maximum facility-wide risks at the facility with the maximum risk value shown.

The maximum individual cancer risk from all HAP emissions at a facility that contains sources subject to the MTVLO MACT standards is estimated to be 200-in-1 million, and the maximum chronic non-cancer TOSHI value is estimated to be 4. The highest facility-wide cancer risk for a facility that includes a MTVLO source is primarily driven by emissions associated with sources subject to the organic liquids distribution (OLD) NESHAP, 40 CFR part 63, subpart EEEE, and the highest facility-wide non-cancer risk is primarily driven by chemical manufacturing processes. The OLD and chemical manufacturing process emissions will be addressed as part of our effort to develop integrated requirements for the chemical manufacturing sector. We intend to develop integrated rules for the chemical manufacturing sector over the next 2 years.

The results of the demographic analyses performed to investigate the distribution of risks above 1-in-1 million, based on actual emissions levels for the population living within 5 km of the facilities, among various demographic groups are provided in a report available in the docket for this action and summarized in Table C.3 below.

TABLE C.3—MARINE TANK VESSEL LOADING OPERATIONS DEMOGRAPHIC RISK ANALYSIS RESULTS

Emissions basis	Maximum risk (in 1 million)	Population with risk greater than 1-in-1 million							
		Total (millions)	Minority %	African American %	Other and multi-racial %	Hispanic or Latino %	Native American %	Below the poverty level %	Over 25 W/O a HS diploma %
Nationwide	n/a	285	25	12	12	14	0.9	13	13
Source Category	20	0.06	29	7	21	38	0.6	15	19
Facility-wide	200	0.8	38	18	39	14	0.5	18	18

The results of the demographic analysis show that, for the MTVLO source category, of the 60,000 people with cancer risk greater than 1-in-1 million, 29 percent could be classified as a "Minority," 38 percent are included in the "Hispanic or Latino" demographic group, 21 percent are included in the "Other and Multiracial" demographic group, 15 percent are included in the "Below Poverty Level" demographic group, and 19 percent are included in the "Over 25 Without a High School Diploma" demographic group. The percentage of the population within 5 km of the terminal and with a cancer risk greater than 1-in-1 million is higher than the typical distribution of these demographic groups across the United States. The facility-wide demographic analysis shows that many more people (800,000) are at cancer risk greater than 1-in-1 million. As with the MTVLO analysis, many of the demographic groups have disparate impacts compared to the distribution across the United States.

Details of these assessments and analyses can be found in the residual risk documentation referenced in section IV.A of this preamble, which is available in the docket for this action.

4. What are our proposed decisions on risk acceptability and ample margin of safety?

a. October 2008 Proposed Decision

In October 2008, we proposed that the risks were acceptable because the risk results indicated that cancer risks to the individual most exposed to emissions from the category were greater than 1-in-1 million, but less than 100-in-1 million, and there were no other significant health impacts. We identified one emissions control option that would reduce risks in the ample margin of safety determination. We proposed that such control was not necessary to protect public health with an ample margin of safety in light of the high costs and limited additional health protection it would provide. We also proposed that emissions from the source category posed no potential for adverse environmental effects, did not pose potential for human health multipathway risks, and were unlikely to cause acute or chronic non-cancer health impacts. Therefore, we proposed that the existing standards provided an ample margin of safety and proposed to re-adopt the existing MACT standards to satisfy section 112(f) of the CAA.

b. Risk Acceptability

The revised risk analysis we performed for this proposal indicates that the cancer risks to the individual most exposed is 20-in-1 million based on actual emissions and 30-in-1 million based on MACT-allowable emissions. The cancer incidence and the number of people exposed to cancer risks of 1-in-1 million or greater are relatively low, based on actual emissions. The analyses show no potential for adverse environmental effects or human health multipathway effects, and that chronic, non-cancer health impacts are unlikely. The revised assessment did indicate that an acute non-cancer HQ as high as 1 could occur, based on the REL value. Our additional analysis of facility-wide risks shows that the maximum facility-wide cancer risk is 200-in-1 millions and the maximum facility-wide non-cancer TOSHI is 4. It also shows that the MTVLO processes located at the facilities with these maximum risk values contribute approximately 10 and 20 percent to such risks, respectively. Our additional analyses of the demographics of the exposed population show disparities in risks between demographic groups, but MTVLO represent a small portion of the population at risk. Based on this low cancer risk level and in consideration of other health measures and factors, including the low cancer incidence (one case in every 100 years) and the low maximum non-cancer risk level (TOSHI of 0.3 based on actual emissions and 0.5 based on MACT-allowable emissions), we propose that the risks from the MTVLO source category are acceptable.

c. Ample Margin of Safety

Because we are proposing that the risks are acceptable, but still above 1-in-1 million, we then reconsidered our 2008 ample margin of safety decision.

We have not identified any additional control options or any changes to the previously-analyzed control option that would further reduce risks from MTVLO that have cancer risks above 1-in-1 million. Our analysis does not indicate a change in the emissions reductions that could be achieved or in the cost of control for the control option considered, but ultimately rejected, in the October 2008 proposal. Therefore, we continue to propose that the current MACT-based standards provide an ample margin of safety to protect public health and the environment, and we are proposing to re-adopt the existing MACT standards to satisfy section 112(f) of the CAA.

5. What are our proposed decisions on the technology review?

In the October 10, 2008 proposal, as part of our technology review, we stated that we had not identified any advancements in practices, processes, and control technologies applicable to the emission sources in the MTVLO source category that would result in decreased emissions, and, on that basis, proposed to re-adopt the existing MACT standards to satisfy section 112(d)(6) of the CAA. In that review, we examined the regulatory requirements and/or technical analyses for subsequently-promulgated air toxics regulations applicable to source categories with emission sources similar to those in the MTVLO source category, and we searched the RBLC for controls applicable to VOC- and HAP-emitting processes in the MTVLO source category that might further reduce HAP emissions. In addition to reviewing subsequent regulatory actions applicable to similar types of emissions, such as those from loading racks or transfer operations, we also conducted a review for other VOC and organic HAP-emitting processes that would have similar, technology-transferable controls.

We conducted a further review in conjunction with this proposed rulemaking. The existing MACT

standards require collection and control for MTVLO facilities that load at least 10 million barrels per year (bbl/yr) of gasoline. As part of our technology review, we identified vapor collection and processors (recovery), as a possible control for additional gasoline loading MTLVO facilities. Recovery technology is appropriate for controlling mixtures of compounds and gasoline is the highest-quantity commodity loaded, based on our review of the Waterborne Commerce Statistics Center (WCSC) database for the United States. The WCSC database contains detailed information on the types and quantities of commodities loaded and unloaded at United States ports, harbors, waterways, and canals.

As part of our technology review, we evaluated gasoline loading thresholds of 0.5, 1.0, and 5 million bbl/yr gasoline loaded. Specifically, we found that MTVLO facilities loading 5 million bbl/yr have approximately 25 tons per year of HAP emissions. Facilities with this level of HAP emissions are subject to the control requirements under the existing rule. Therefore, loading in excess of 5 million bbl/yr of gasoline is already required to be controlled under the current standard.

We estimated the cost-effectiveness and overall impacts of the vapor collection and recovery options as shown in Table C.4. As discussed earlier, the 5 million bbl/yr threshold would not achieve any HAP or VOC reductions beyond those required under the current rule. For the 1 million bbl/yr threshold, we estimate an additional 190 TPY of HAP emissions and 2,600 TPY of VOC emission reduction can be achieved. The cost-effectiveness of these controls is $74,000 per ton of HAP emission reduction and $5,500 per ton of VOC emission reduction. While the HAP cost-effectiveness is higher than our historical values, the VOC cost-effectiveness is within the range of acceptability. For the 0.5 million bbl/yr option, the additional costs of controls is disproportionate to the additional emission reduction. As such, we are proposing to reduce the threshold in the current rule from 10 million bbl/yr to 1 million bbl/yr.

TABLE C.4—COST-EFFECTIVENESS AND NATIONWIDE IMPACTS FOR VAPOR COLLECTION AND RECOVERY CONTROLS FOR SOURCES WITH GASOLINE LOADING

Gasoline loading threshold (million bbl/yr)	Capital cost (million $)	Total annualized cost (million $)	Recovery credit (million $)	Net annualized cost (million $)	HAP emission reduction (TPY)	HAP cost-effectiveness ($/ton)	VOC emission reduction (TPY)	VOC cost-effectiveness ($/ton)
5	0	0	0	0	0	.....	0	.....
1	22	16	1	14	190	74,000	2,600	5,500
0.5	36	22	2	20	240	85,000	3,200	6,300

The current rule requires a 97 percent HAP reduction for those facilities with a loading of 10 million bbl/yr. To foster the use of vapor recovery rather than combustion of the vapors, we considered additional formats for the standard. We looked to similar MACT standards for gasoline loading of tank trucks and rail cars. Based on our review of these standards, we believe that vapor recovery is capable of achieving an emission limit of less than or equal to 10 milligrams of total organic compound emissions per liter of gasoline loaded (mg/l). The 10 mg/l emission limit also approximates the 97-percent control that is required for the larger-emitting, existing MTVLO subcategories. Thus, we propose to provide facilities the option of either meeting the 97-percent control requirement or the equivalent emission limit of 10 mg/l.

In summary, as a result of the technology review under section 112(d)(6) of the CAA, we are proposing to lower the existing threshold for control of emissions from gasoline loading from 10 million bbl/yr to 1 million bbl/yr and to provide facilities the option of either meeting the 97-percent control requirement or the equivalent emission limit of 10 mg/l.

6. What other actions are we proposing?

a. SSM Provisions

We reviewed the SSM provisions of the MTVLO NESHAP. The MTVLO NESHAP do contain an SSM exemption because they specify in 40 CFR 63.560, Table 1 that 40 CFR 63.6(f)(1) applies. Consistent with *Sierra Club* v. *EPA,* EPA is proposing that standards in this rule would apply at all times. We determined that there are currently several cross-references in the MTVLO NESHAP that could cause some confusion regarding periods of SSM. We also determined that the NESHAP do not specifically address recordkeeping and reporting requirements during periods of malfunction. We are, therefore, proposing several revisions to 40 CFR part 63, subpart Y to address these issues. We are also proposing to add language to 40 CFR 63.563(b)(1) to clarify the conditions during which performance tests shall be conducted. We are further proposing to revise 40 CFR 63.560, Table 1 to specify that the SSM included provisions in 40 CFR 63.6(f)(1), 40 CFR 63.7(e)(1), and 40 CFR 63.10(c)(10)–(11) of the *General Provisions* do not apply. Finally, we are proposing to promulgate an affirmative defense against civil penalties for exceedances of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense.

EPA has attempted to ensure that we have removed any provisions in the regulatory text that are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether there are any such provisions that we have inadvertently overlooked.

b. Significant Emission Points Not Previously Regulated

We also conducted a review of the MTVLO NESHAP to determine whether there were significant emissions sources for which standards were not previously developed. In this review, we identified two subcategories, those facilities emitting less than 10/25 TPY of HAP, and those facilities located more than 0.5 miles from shore, for which the current NESHAP do not include emission standards. As discussed below, we considered two levels of control (submerged fill and vapor recovery) for these two subcategories.

Submerged fill reduces the amount of emissions generated from the loading of vessels by reducing turbulence and misting. Use of this technique results in a 60-percent reduction in emissions compared to splash loading. We have determined that submerged fill is currently used by most, if not all, of the facilities. We reached this conclusion

based on information obtained through contact with industry representatives and the Coast Guard about submerged filling. Existing Coast Guard rules (46 CFR 153.282) require that "the discharge point of a cargo tank filling line must be not higher above the bottom of the cargo tank or sump than 10 centimeters (approximately 4 inches) or the radius of the filling line, whichever is greater." According to Coast Guard representatives, the radius of the fill lines can be up to 6 inches. We are proposing that the submerged fill technique is the MACT floor.

We next undertook an evaluation of potential beyond-the-floor options for the two identified subcategories. The only option beyond the floor is the application of vapor collection and processors, which were the basis for the emissions standards applicable to other MTVLO, at existing facilities in two subcategories of the MTVLO NESHAP (60 FR 48388). We examined the use of these controls by sources in the two subcategories in the context of the original MACT standards, but rejected their use as a beyond the floor option because they were not cost effective. As described above under the technology review, we are proposing to lower the threshold for using vapor collection and processing at MTVLO facilities loading gasoline from 10 million bbl/yr to 1 million bbl/yr. We are also proposing to provide facilities the option of either meeting the 97-percent control requirement or the equivalent emission limit of 10 mg/l. For the reasons set forth above, we are proposing these same requirements as a beyond the floor measure for these two subcategories. As for those facilities that do not load 1 million bbl/yr, we are proposing no additional controls as part of our beyond the floor analysis.

In conclusion, we are proposing in this action to set submerged fill as the floor level of control for these two MTVLO subcategories. Additionally, we are proposing vapor recovery as a beyond-the-floor option for those two MTVLO subcategories if they load 1 million bbl/yr or more of gasoline.

As noted above, we are proposing that the MACT standards, prior to the implementation of the proposed emission limitations discussed in this section, provide an ample margin of safety to protect public health. Therefore, we maintain that after implementation, which will further reduce HAP emissions, the rule will continue to provide an ample margin of safety to protect public health. Consequently, we do not believe it will be necessary to conduct another residual risk review under CAA section 112(f) for this source category 8 years following promulgation of these limitations.

D. What are the results and proposed decisions for the Pharmaceuticals Production source category?

1. Overview of the Source Category and MACT Standard

The National Emission Standards for Pharmaceuticals Production were promulgated on September 21, 1998 (63 FR 50280) and codified at 40 CFR part 63, subpart GGG. The Pharmaceuticals Production MACT standards apply to major sources of HAP. We identified 27 facilities currently subject to the Pharmaceuticals Production MACT standards.

The pharmaceutical manufacturing process consists of chemical production operations that produce drugs and medication. These operations include chemical synthesis (deriving a drug's active ingredient) and chemical formulation (producing a drug in its final form).

Emission sources at pharmaceutical production facilities include breathing and withdrawal losses from chemical storage tanks, venting of process vessels, leaks from piping and equipment used to transfer HAP compounds (equipment leaks), and volatilization of HAP from wastewater streams.

Typical control devices used to reduce HAP emissions from process vents include flares, incinerators, scrubbers, carbon adsorbers, and condensers. Emissions from storage vessels are controlled by floating roofs or by routing them to a control device. Emissions from wastewater are controlled by a variety of methods, including equipment modifications (*e.g.,* fixed roofs on storage vessels and oil water separators; covers on surface impoundments containers, and drain systems), treatment to remove the HAP (steam stripping, biological treatment), control devices, and work practices. Emissions from equipment leaks typically are reduced by leak detection and repair work practice programs, and in some cases, by equipment modifications.

2. What data were used in our risk analyses?

We initially created a preliminary data set for the source category using data in the 2002 NEI Final Inventory, Version 1 (made publicly available on February 26, 2006). We reviewed the NEI data set and made changes where necessary to ensure the proper facilities were included and to ensure the proper processes were allocated to the Pharmaceuticals Production source category. We also reviewed the emissions and other data to identify data anomalies that could affect risk estimates. On March 29, 2007, we published an ANPRM (72 FR 29287) for the express purpose of requesting comments and updates to this data set, as well as to the data sets for the other source categories addressed in that ANPRM. Comments received in response to the ANPRM were reviewed and considered, and we made adjustments to the data set where we concluded the comments supported such adjustment. After making appropriate changes to the data set based on this public data review process, the data set on which we based the initial proposal was created. This data set was used to conduct the risk assessment and other analyses for the Pharmaceuticals Production source category that formed the basis for the proposed RTR review actions included in the October 10, 2008 proposal.

We have continued to scrutinize the existing data set and have evaluated any additional data that has become available since the October 10, 2008 proposal. Since the time of the proposal, we identified an error in the latitude/longitude coordinates of one emission point at one facility. This error has been corrected in the data set, and no other changes have been made to it since the proposal.

Methylene chloride, methanol, acetonitrile, and toluene account for the majority of the HAP emissions from these facilities (approximately 890 TPY, or 85 percent of the total HAP emissions by mass). These facilities also reported relatively small emissions of 54 other HAP. For more detail, see the memo in the docket for this action describing the risk assessment inputs and models for the Pharmaceuticals Production source category.

We estimate that MACT-allowable emissions from this source category could be up to 25 percent greater than the actual emissions, primarily from process vents, as it is possible that the control devices used at some facilities achieve greater emission reductions from these emission sources than what is required by the MACT standard. For more detail about this estimate of the ratio of actual to MACT-allowable emissions, see the memo in the docket for this action describing the estimation of MACT-allowable emission levels and associated risks and impacts.

3. What are the results of the risk assessments and analyses?

We have conducted a revised inhalation risk assessment for the

Pharmaceuticals Production source category. We have also conducted an assessment of facility-wide risk and performed a demographic analysis of population risks. Table D.1 provides an overall summary of the results of the revised inhalation risk assessment.

TABLE D.1—PHARMACEUTICALS PRODUCTION REVISED INHALATION RISK ASSESSMENT RESULTS *

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Population at risk ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic non-cancer TOSHI [3]		Maximum off-site acute non-cancer HQ [4]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
27	3	4	2,000	0.0008	0.2	0.4	HQ_{REL} = 2 glycol ethers, chloroform HQ_{AEGL-1} = 0.001 chloroform

* All results are for impacts out to 50 km from every source in the category.
[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the Pharmaceutical Production source category is the nervous system.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which, in most cases, is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute threshold. See section IV.A of this preamble for explanation of acute threshold values.

The inhalation risk modeling was performed using actual emissions level data. As shown in Table D.1, the results of the revised inhalation risk assessment indicate the maximum lifetime individual cancer risk could be as high as 3-in-1 million, the maximum chronic non-cancer TOSHI value could be up to 0.2. The total estimated national cancer incidence from these facilities based on actual emission levels is 0.0008 excess cancer cases per year, or one case in every 1,250 years. The maximum off-facility-site acute HQ value could be as high as 2, based on the actual emissions level and the REL value for chloroform. The HQ value at this level occurs at a location adjacent to one facility fenceline for only a few (13) hours per year. This maximum exceedance of the REL value corresponds to an HQ_{AEGL-2} equal to 0.001. We also note a possible exceedance of the short-term REL value for glycol ethers at one other facility (HQ_{REL} = 2). There are no other appropriate acute threshold values available for glycol ethers on which to base a comparison of potential risk.

Our analysis of potential differences between actual emission levels and emissions allowable under the MACT standards indicated that MACT-allowable emission levels may be up to 25 percent greater than actual emission levels. Considering this difference, the risk results from the revised inhalation risk assessment indicate the maximum lifetime individual cancer risk could be as high as 4-in-1 million, and the maximum chronic non-cancer TOSHI value could be up to 0.4 at the MACT-allowable emissions level.

Table D.2 displays the results of the facility-wide risk assessment. This assessment was conducted based on actual emission levels.

TABLE D.2—PHARMACEUTICALS PRODUCTION FACILITY-WIDE RISK ASSESSMENT RESULTS

Maximum facility-wide individual cancer risk (in 1 million)	40
Pharmaceuticals Production source category contribution to this maximum facility-wide individual cancer risk [1]	<1%
Maximum facility-wide chronic non-cancer TOSHI	0.8
Pharmaceuticals Production source category contribution to this maximum facility-wide chronic non-cancer TOSHI [1]	<1%

[1] Percentage shown reflects Pharmaceuticals Production source category contribution to the maximum facility-wide risks at the facility with the maximum risk value shown.

The maximum individual cancer risk from all HAP emissions at a facility that contains sources subject to the Pharmaceuticals Production MACT standards is estimated to be 40-in-1 million, and the maximum chronic non-cancer TOSHI value is estimated to be 0.8. At the facility where these maximum risk values occur, the estimated proportion of the risk attributable to the Pharmaceuticals Production source category processes is less than one percent for both cancer and non-cancer risk. The highest facility-wide cancer risk for a facility that includes a pharmaceuticals production source is primarily driven by acrylonitrile-butadiene-styrene (ABS) resin production processes, and the highest facility-wide non-cancer risk is primarily driven by pesticide manufacturing processes. These ABS resin and pesticide manufacturing processes will be addressed in future residual risk and technology reviews.

The results of the demographic analyses performed to investigate the distribution of risks above 1-in-1 million, based on actual emissions levels for the population living within 5 km of the facilities, among various demographic groups are provided in a report available in the docket for this action and summarized in Table D.3 below.

TABLE D.3—PHARMACEUTICALS PRODUCTION DEMOGRAPHIC RISK ANALYSIS RESULTS

Emissions basis	Maximum risk (in 1 million)	Population with risk greater than 1-in-1 million							
		Total (millions)	Minority %	African American %	Other and multiracial %	Hispanic or Latino %	Native American %	Below the poverty level %	Over 25 W/O a HS diploma %
Nationwide	n/a	285	25	12	12	14	0.9	13	13
Source category	3	0.002	12	4	8	34	0.5	32	25
Facility-wide	40	0.03	18	14	4	12	0.3	21	15

The results of the demographic analysis show that, for the Pharmaceuticals Production source category, of the population of 2,000 people with cancer risk greater than 1-in-1 million, 34 percent are included in the "Hispanic or Latino" demographic group, 32 percent are included in the "Below Poverty Level" demographic group, and 25 percent are included in the "Over 25 Without a High School Diploma" demographic group. The percentage of the population within 5 km of a pharmaceuticals production facility and with a cancer risk greater than 1-in-1 million is higher than seen for these demographic categories based on the distribution of these demographic groups across the United States. The table also shows that the results of the facility-wide demographic analysis are higher than seen across the U.S, for the those included in the "African American," "Below Poverty Level," and the "Over 25 Without a High School Diploma" demographic groups, but the risks are lower than these levels for the other demographic groups.

Details of these assessments and analyses can be found in the residual risk documentation referenced in section IV.A of this preamble, which is available in the docket for this action.

4. What are our proposed decisions on risk acceptability and ample margin of safety?

a. October 2008 Proposed Decision

In our October 10, 2008 proposal, we stated that the risks were acceptable because the risk results indicated that cancer risks to the individual most exposed to emissions from the category of 10-in-1 million were greater than 1-in-1 million but less than 100-in-1 million. We then analyzed other risk factors and emissions control options in the ample margin of safety determination. In this analysis, we found emissions from the source category posed no potential for an adverse environmental effect, did not pose potential for human health multi-pathway risks, and were unlikely to cause acute or chronic non-cancer health impacts. We also identified one emissions control option that would reduce risks. We proposed that such control was not necessary to protect public health with an ample margin of safety in light of the high cost and limited additional health protection it would provide. Therefore, we proposed that the existing standard provided an ample margin of safety, and we proposed to re-adopt the existing MACT standard to satisfy section 112(f) of the CAA.

b. Risk Acceptability

The revised inhalation risk analysis we performed for this proposal indicates that the cancer risks to the individual most exposed is 3-in-1 million based on actual emissions and up to 4-in-1 million based on MACT-allowable emissions. The cancer incidence and the number of people exposed to cancer risks of 1-in-1 million or greater are not significantly changed from the risk identified in the October 2008 proposal. Similarly, the risk analysis continued to show no potential for an adverse environmental effect or human health multi-pathway effects, and that chronic non-cancer health impacts are unlikely. The revised assessment did indicate that an acute non-cancer HQ as high as 2 could occur, based on the REL value at a location adjacent to the facility fenceline for only a few (13) hours per year. However, we do not believe this situation warrants additional control considering the overall health effects. While our additional analysis of facility-wide risks showed that the maximum facility-wide cancer risk is 40-in-1 million, it also showed that pharmaceutical sources located at such facilities contributed less than 1 percent to such risk. The facility-wide analysis indicates that the maximum chronic non-cancer risks are unlikely to cause health impacts. Our additional analysis of the demographics of the exposed population may show disparities in risks between demographic groups. Based on this low cancer risk level and in consideration of other health measures and factors, including the low cancer incidence (one case in every 1,250 years) and the low maximum non-cancer risk level (TOSHI of 0.2 based on actual emissions and 0.4 based on MACT-allowable emissions), we propose that the risks from the Pharmaceuticals Production source category are acceptable.

c. Ample Margin of Safety

Because we are proposing that the risks are acceptable, but still above 1-in-1 million, we then re-considered our 2008 ample margin of safety decision.

We have not identified any additional control options or any changes to the previously-analyzed control option that would affect emissions reductions or the costs of control. Therefore, we continue to propose that the current MACT standards provide an ample margin of safety to protect public health and the environment, and we are proposing to re-adopt the existing MACT standards to satisfy section 112(f) of the CAA.

5. What are our proposed decisions on the technology review?

In the October 10, 2008 proposal, we identified no developments in practices, processes, and control technologies applicable to the emission sources and thus we did not propose any additional controls as necessary under CAA section 112(d)(6). In that review, we examined the regulatory requirements and/or technical analyses for subsequently promulgated air toxics regulations with similar types of emissions sources as those in the Pharmaceuticals Production source category, and we conducted a search of the RBLC for controls for VOC- and HAP-emitting processes in the Pharmaceuticals Production source category. We have not identified any additional developments in practices, processes, and control technologies since the proposal date. Thus, we are again proposing that it is not necessary to revise the existing MACT standards pursuant to section 112(d)(6).

6. What other actions are we proposing?

a. SSM Provisions

We propose to eliminate the SSM exemption in the Pharmaceuticals

Production MACT standards. Consistent with *Sierra Club* v. *EPA,* EPA proposes that standards in this rule would apply at all times. We are proposing several revisions to 40 CFR part 63, subpart GGG. Specifically, we are proposing to revise Table 1 to indicate that the requirements in 40 CFR 63.6(e) of the *General Provisions* do not apply. The 40 CFR 63.6(e) requires owner or operators to act according to the general duty to "operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions." We are separately proposing to incorporate this general duty to minimize into 40 CFR 63.1250(g)(3). The 40 CFR 63.6(e) also requires the owner or operator of an affected source to develop a written SSM plan. We are proposing to remove the SSM plan requirement. We are proposing to remove the exemption provisions for periods of SSM in 40 CFR 63.1250(g), require that delay of equipment leak repair plans be contained in a separate document in 40 CFR 63.1255(g)(4), revise 40 CFR 63.1257(a) to specify the conditions for performance tests, and revise the SSM associated monitoring, recordkeeping, and reporting requirements in 40 CFR 63.1258(b)(8), 40 CFR 63.1259(a), and 40 CFR 63.1260(i) to require reporting and recordkeeping for periods of malfunction. We are also proposing to revise Table 1 to specify that 40 CFR 63.6(f)(1), 40 CFR 63.7(e)(1), the last sentence of 40 CFR 63.8(d)(3), 40 CFR 63.10(c)(10), (11), and (15), and 40 CFR 63.10(d)(5) of the *General Provisions* do not apply. In addition, we are proposing to promulgate an affirmative defense against civil penalties for exceedances of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense. EPA has attempted to ensure that we have not incorporated into proposed regulatory language any provisions that are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether there are any such provisions that we have inadvertently incorporated or overlooked.

b. Rule Improvements Review

We are proposing to correct an editorial error in 40 CFR 63.1257(e)(2)(iii)(A)(6)(ii). That section specifies several criteria under which the inlet to the equalization tank may be considered as the inlet to the biological treatment process for the purposes of performance tests to show compliance with the standards in 40 CFR 63.1256(a)(2)(i). This section incorrectly provides that only one of the listed criteria must be met for the inlet to the equalization tank to be considered the inlet to the biological treatment process. Instead, it should specify that all of the criteria must be met. Thus, we are proposing to revise this section by changing the "or" before each clause to "and," to clarify that all the criteria of 40 CFR 63.1256(e)(2)(iii)(A)(6)(ii) must be met for the inlet to the equalization tank to be considered as the inlet to the biological treatment process.

E. What are the results and proposed decisions for the Printing and Publishing Industry source category?

1. Overview of the Source Category and MACT Standard

The National Emission Standards for the Printing and Publishing Industry were promulgated on May 30, 1996 (61 FR 27132) and codified at 40 CFR part 63, subpart KK. The Printing and Publishing Industry MACT standards apply to major sources of HAP. We identified 172 facilities currently subject to the Printing and Publishing Industry MACT standards.

Printing and publishing facilities are those facilities that use rotogravure, flexography, and other methods, such as lithography, letterpress, and screen printing, to print on a variety of substrates, including paper, plastic film, metal foil, and vinyl. The Printing and Publishing Industry MACT standards include two subcategories: (1) Publication rotogravure printing and (2) product and packaging rotogravure and wide-web flexographic printing. Emissions at printing and publishing facilities result from the evaporation of solvents in the inks and from cleaning solvents. The emission points include printing presses and associated dryers and ink and solvent storage. Control techniques include recovery devices, combustion devices, and the use of non-HAP/low-HAP inks and cleaning solvents.

2. What data were used in our risk analyses?

We initially created a preliminary data set for the source category using data in the 2002 NEI Final Inventory, Version 1 (made publicly available on February 26, 2006). We reviewed the NEI data and made changes where necessary to ensure the proper facilities were included and to ensure the proper processes were allocated to the Printing and Publishing Industry source category. We also reviewed the emissions and other data to identify data anomalies that could affect risk estimates. On March 29, 2007, we published an ANPRM (72 FR 29287) for the express purpose of requesting comments on and updates to this data set, as well as to the data sets for the other source categories addressed in that ANPRM. Comments received in response to the ANPRM were reviewed and considered, and we made adjustments to the data set where we concluded the comments supported such adjustment. After making appropriate changes to the data set based on this public data review process, the data set on which we based the initial proposal was created. This data set was used to conduct the risk assessment and other analyses for the Printing and Publishing Industry source category that formed the basis for the proposed RTR actions included in the October 2008 proposal.

We have continued to scrutinize the existing data set and have evaluated any additional data that became available since the October 2008 proposal. Since the time of the proposal, we identified errors in some HAP that were reported to be emitted and several facilities that were included have permanently closed. The data set was updated to correct the errors and remove the facilities that have closed.

Toluene accounts for the majority of the HAP emissions from these facilities (approximately 7,105 TPY, or 83 percent of the total HAP emissions by mass). These facilities also reported relatively small emissions of 58 other HAP. These emissions are primarily from the evaporation of HAP present in the inks and other materials applied with rotogravure and flexographic processes.

We estimate that MACT-allowable emissions from emission points within this source category could be up to five times greater than the actual emissions because some capture systems and control devices used on printers at some facilities could achieve greater emission reductions (in the range of 98 to possibly 100 percent) than what is required by the MACT standard (92 percent). For more detail about this estimate of the ratio of actual to MACT-allowable emissions, see the memo in the docket for this action describing the estimation of MACT-allowable emission levels and associated risks and impacts.

3. What are the results of the risk assessments and analyses?

We have conducted a revised inhalation risk assessment for the Printing and Publishing Industry source category. We have also conducted an assessment of facility-wide risk, and performed a demographic analysis of

population risks. Table E.1 provides an overall summary of the results of the revised inhalation risk assessment.

TABLE E.1—PRINTING AND PUBLISHING INDUSTRY REVISED INHALATION RISK ASSESSMENT RESULTS *

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Population at risk ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic non-cancer TOSHI [3]		Maximum off-site acute non-cancer HQ [4]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
172	4	20	300	0.0006	0.08	0.4	HQ_{REL} = 10 toluene HQ_{AEGL-1} = 0.6 toluene

* All results are for impacts out to 50 km from every source in the category.
[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the Printing and Publishing Industry source category is the reproductive system.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which in most cases is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute threshold. See section IV.A. of this preamble for explanation of acute threshold values.

The inhalation risk modeling was performed using actual emissions level data. As shown in Table E.1, the risks based on these actual emission levels indicate the maximum lifetime individual cancer risk could be as high as 4-in-1 million, the maximum chronic non-cancer TOSHI value could be up to 0.08. The total estimated national cancer incidence from these facilities based on the actual emission levels is 0.0006 excess cancer cases per year, or one case in every 1,666 years. The maximum off-facility-site acute HQ value could be as high as 10, based on the actual emissions level and the REL value for toluene. The HQ value at this level occurs at a location adjacent to one facility fenceline for only a few (90) hours per year. This maximum exceedance of the REL value corresponds to an HQ_{AEGL-1} equal to 0.6.

Our analysis of potential differences between actual emission levels and emissions allowable under the MACT standard indicated that MACT-allowable emission levels may be up to five times greater than actual emission levels. Assuming this worst case difference occurred at the highest risk facility, the scaled risk results from the revised inhalation risk assessment would indicate the maximum lifetime individual cancer risk could be as high as 20-in-1 million, and the maximum chronic non-cancer TOSHI value could be up to 0.4.

Table E.2 displays the results of the facility-wide risk assessment. This assessment was conducted based on actual emission levels.

TABLE E.2—PRINTING AND PUBLISHING INDUSTRY FACILITY-WIDE RISK ASSESSMENT RESULTS

Maximum facility-wide individual cancer risk (in 1 million)	20
Printing and Publishing Industry source category contribution to this maximum facility-wide individual cancer risk [1]	< 1%
Maximum facility-wide chronic non-cancer TOSHI	[1] 20
Printing and Publishing Industry source category contribution to this maximum facility-wide chronic non-cancer TOSHI [2]	[3] < 1%

[1] After risk modeling was complete, EPA received data that identified an error in emissions that caused this highest TOSHI value. After revising the emissions value, the highest facility-wide TOSHI is 2 from a different facility.
[2] Percentage shown reflects Printing and Publishing Industry source category contribution to the maximum facility-wide risks at the facility with the maximum risk value shown.
[3] This percentage reflects the Printing and Publishing Industry source category contribution to the highest facility-wide TOSHI of 2, as noted in footnote 1 to this table.

The maximum individual cancer risk from all HAP emissions at a facility that contains sources subject to the Printing and Publishing Industry MACT standards is estimated to be 20-in-1 million, and the maximum chronic non-cancer TOSHI value is estimated to be 20. At the facilities where these maximum risk values occur, the estimated proportion of the risk attributable to the Printing and Publishing Industry source category processes is less than one percent for both cancer and non-cancer risk.

The results of the demographic analyses performed to investigate the distribution of risks above 1-in-1 million, based on actual emissions levels for the population living within 5 km of the facilities, among various demographic groups are provided in a report available in the docket for this action and summarized in Table E.3 below.

TABLE E.3—PRINTING AND PUBLISHING INDUSTRY DEMOGRAPHIC RISK ANALYSIS RESULTS

Emissions basis	Maximum risk (in 1 million)	Population with risk greater than 1-in-1 million							
		Total (millions)	Minority %	African American %	Other and multiracial %	Hispanic or Latino %	Native American %	Below the poverty level %	Over 25 W/O a HS diploma %
Nationwide	n/a	285	25	12	12	14	0.9	13	13
Source Category	4	0.00005	0	0	0	0	0	11	5

TABLE E.3—PRINTING AND PUBLISHING INDUSTRY DEMOGRAPHIC RISK ANALYSIS RESULTS—Continued

Emissions basis	Maximum risk (in 1 million)	Population with risk greater than 1-in-1 million							
		Total (millions)	Minority %	African American %	Other and multiracial %	Hispanic or Latino %	Native American %	Below the poverty level %	Over 25 W/O a HS diploma %
Facility-wide	20	0.05	14	8	5	5	0.3	9	11

The results of the Printing and Publishing Industry source category demographic analysis show that for the 50 people living within 5 km of a printing and publishing industry facility and with a cancer risk greater than 1-in-1 million is less than the national averages for the demographic categories displayed in Table E.3, based on the typical distribution of these demographic groups across the United States. The table also shows that the results of the demographic analysis for the facility-wide emissions are similarly less than the national averages for these demographic groups. This means the emissions from these sources do not create any significant disparate risk impacts.

Details of these assessments and analyses can be found in the residual risk documentation as referenced in section IV.A of this preamble, which is available in the docket for this action.

4. What are our proposed decisions on risk acceptability and ample margin of safety?

a. October 2008 Proposed Decision

In our October 10, 2008 proposal, the risk results indicated that cancer risk to the individual most exposed to emissions from the category was 0.05-in-1 million, which is less than 1-in-1 million (*i.e.,* were "low risk"). Therefore, we did not conduct an additional ample margin of safety analysis for the proposed rule.

b. Risk Acceptability

While at the time of the October 10, 2008 proposal this source category showed low risks (cancer risks to the individual most exposed to emissions from the category were less than 1-in-1 million), in our revised analysis we found that cancer risks to the individual most exposed to emissions from the category were 4-in-1 million based on actual emissions and as high as 20-in-1 million based on MACT-allowable emissions. This change in risk is primarily the result of a cancer health benchmark value becoming available for ethyl benzene. The cancer incidence and the number of people exposed to cancer risks of 1-in-1 million or greater are relatively low, based on actual emissions. The analyses show no potential for an adverse environmental effect or human health multi-pathway effects, and that chronic non-cancer health impacts are unlikely. The revised assessment did indicate that an acute non-cancer HQ as high as 10 could occur, based on the REL value for toluene at a location adjacent to the facility fenceline for up to 90 hours per year. However, given the fact that this potential impact does not exceed the AEGL–1 value for toluene (HQ_{AEGL-1} = 0.6) we do not believe this situation warrants additional control considering the overall health effects. Our additional analysis of facility-wide risks showed that the maximum facility-wide cancer risk is 20-in-1 million and the maximum facility-wide non-cancer TOSHI is 20. It also showed that the printing and publishing processes located at the facilities with these maximum risk values contribute less than 1 percent to such risks. As previously mentioned, our additional analysis of the demographics of the exposed population suggests there are not large disparities in risks between demographic groups.

Based on this low cancer risk level and in consideration of other health measures and factors, including the low cancer incidence (one case in every 1,666 years), the low maximum non-cancer risk level (TOSHI of 0.08 based on actual emissions and 0.4 based on MACT-allowable emissions), relatively low facility-wide risks which are not attributable to the printing and publishing category, and the lack of disparate impacts in the demographic analysis, we propose that the risks from the Printing and Publishing Industry source category are acceptable.

c. Ample Margin of Safety

Because we are proposing that the risks are acceptable, but still above 1-in-1 million, we then re-considered our 2008 ample margin of safety decision. Based on these analyses, we continue to propose that the current MACT standards provide an ample margin of safety to protect public health and the environment, and we are proposing to re-adopt the existing MACT standards to satisfy section 112(f) of the CAA.

5. What are our proposed decisions on the technology review?

In the October 2008 proposal, we identified no advancements in practices, processes, and control technologies applicable to the emission sources in the Printing and Publishing Industry source category in our technology review, and thus we proposed that it was not necessary to revise the existing MACT standards pursuant to section 112(d)(6) of the CAA. In that review we examined the regulatory requirements and/or technical analyses for subsequently promulgated air toxics regulations with similar types of emissions sources as those in the Printing and Publishing Industry source category, and we conducted a search of the RBLC for controls for VOC- and HAP-emitting processes in the Printing and Publishing Industry source category. We re-examined these same sources of information to identify any new developments since the time of the October 2008 proposal. For the purposes of this proposal, we examined the option of retrofitting permanent total enclosures onto those controlled presses that do not already have permanent total enclosures. A permanent total enclosure improves the capture of solvent HAP from inks and delivers the additional captured solvent HAP to a control device. We estimate the cost-effectiveness of this retrofit to be over $50,000 per additional ton of HAP controlled. We find the cost of this retrofit to be disproportionate to the emission reduction that would be achieved. Thus, we are proposing that it is not necessary to revise the existing MACT standards pursuant to section 112(d)(6) of the CAA.

6. What other actions are we proposing?

We propose to eliminate the SSM exemption in the Printing and Publishing Industry MACT standard. Consistent with *Sierra Club* v. *EPA,* EPA proposes that standards in this rule would apply at all times. We are proposing several revisions to 40 CFR part 63, subpart KK regarding the standards that apply during periods of

SSM. Specifically, we are proposing to revise Table 1 to indicate that the requirements of 40 CFR 63.6(e) of the *General Provisions* do not apply. Section 63.6(e) requires owners or operators to act according to the general duty to "operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions." We are separately proposing to incorporate this general duty to minimize emissions into 40 CFR 63.823. The 40 CFR 63.6(e) also requires the owner or operator of an affected source to develop a written SSM plan. We are proposing to remove the SSM plan requirement. We are also proposing to revise 40 CFR 63.827 to specify the conditions for performance tests and to revise 40 CFR 63.829 and 40 CFR 63.830 to require reporting and recordkeeping for periods of malfunction. We are proposing to revise Table 1 to specify that 40 CFR 63.6(f)(1), 40 CFR 63.7(e)(1), the last sentence of 40 CFR 63.8(d)(3), 40 CFR 63.10(b)(2)(i), (ii), (iv), and (v), 40 CFR 63.10(c)(10), (11), and (15), and 40 CFR 63.10(d)(5) of the *General Provisions* do not apply. In addition, we are proposing to promulgate an affirmative defense against civil penalties for exceedances of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense. EPA has attempted to ensure that we have not incorporated into proposed regulatory language any provisions that are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether there are any such provisions that we have inadvertently incorporated or overlooked.

F. What are the results and proposed decisions for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants source category?

1. Overview of the Source Category and MACT Standard

The National Emission Standards for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants were promulgated on June 22, 1999 (64 FR 33202) and codified at 40 CFR part 63, subpart CCC. The Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants MACT standards (*i.e.,* Steel Pickling MACT standard) apply to major sources of HAP. We estimate that there are approximately 80 facilities subject to the MACT standards that are currently performing steel pickling and/or acid regeneration. Many of these facilities are located adjacent to integrated iron and steel manufacturing plants or electric arc furnace steelmaking facilities (mini-mills) that produce steel from scrap. Facilities that regenerate HCl may or may not be located at steel pickling operations.

The Steel Pickling source category consists of facilities that pickle steel, using HCl as the pickling acid, and facilities that regenerate the HCl after use, but does not include facilities which pickle steel using acids other than HCl.

Steel pickling is a treatment process in which the heavy oxide crust or mill scale that develops on the steel surface during hot forming or heat treating is removed chemically in a bath of aqueous acid solution. Pickling is a process applied to metallic substances that removes surface impurities, stains, or crusts to prepare the metal for subsequent plating (*e.g.,* with chromium) or other treatment, such as galvanization or painting.

The HAP emission points from the steel pickling and acid regeneration processes include spray roasters, steel pickling baths, steel pickling sprays, and tank vents.

Typical control devices used to reduce HAP emissions from steel pickling facilities include a packed tower scrubber, sieve tray scrubber, or horizontal packed bed scrubber. Each type of scrubber is coupled with a demister. The general trend in scrubber installations at steel pickling facilities is to replace older scrubbers with sieve tray scrubbers, which generate less scrubber effluent (blowdown). For acid regeneration roasters, a cyclone or a Venturi pre-concentrator is generally used before the emissions are scrubbed in one or two counter-current packed tower absorbers.

2. What data were used in our risk analyses?

For the Steel Pickling source category, we compiled preliminary data sets using data in the 2005 NEI. We reviewed these data and made changes where necessary. We also contacted several facilities to verify the emissions and emissions release characteristic data, and we made updates to the data set based on the information received from these communications. This updated data set comprises the data set that was used to conduct the risk assessments and other analyses that form the basis for this proposed action. Hydrochloric acid and chlorine account for all of the HAP emissions from the Steel Pickling source category (approximately 248 and 164 TPY, respectively).

Our analysis of potential differences between actual emission levels and emissions allowable under the MACT standards indicate that actual emissions and allowable emissions are approximately the same as allowable emissions. The available data indicate that pickling processes throughout the industry are equipped with controls that achieve the HCl and chlorine emission limits required by the MACT standards. For more detail about this estimate of the ratio of actual to MACT-allowable emissions, see the memo in the docket for this action describing the estimation of MACT-allowable emission levels and associated risks and impacts.

3. What are the results of the risk assessments and analyses?

We have conducted an inhalation risk assessment for the Steel Pickling source category. We have also conducted an assessment of facility-wide risk and performed a demographic analysis of population risks. Table F.1 provides an overall summary of the inhalation risk assessment results.

TABLE F.1—STEEL PICKLING INHALATION RISK ASSESSMENT RESULTS *

Number of facilities [1]	Maximum chronic non-cancer TOSHI [2]		Population at risk from HI > 1	Maximum off-site acute non-cancer HQ [3]
	Actual emissions level	Allowable emissions level		
51 Modeled Facilities	2	2	30	HQ_{REL} = 0.4 chlorine

TABLE F.1—STEEL PICKLING INHALATION RISK ASSESSMENT RESULTS *—Continued

Number of facilities [1]	Maximum chronic non-cancer TOSHI [2]		Population at risk from HI > 1	Maximum off-site acute non-cancer HQ [3]
	Actual emissions level	Allowable emissions level		
80 Major Source Facilities Subject to the MACT Standard	2	2	50	HQ_{REL} = 0.4 chlorine

* All results are for impacts out to 50 km from every source in the category.
[1] There are 51 facilities in the data set that were modeled. It is believed that these facilities are representative of the entire source category and that the maximum risks are characterized. The population risks were scaled up based on a linear relationship.
[2] Maximum TOSHI. The target organ with the highest TOSHI for the Steel Pickling source category is the neurological system.
[3] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which, in most cases, is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute threshold. See section IV.A of this preamble for explanation of acute threshold values.

The results of the inhalation risk assessment indicated there are no cancer risks or incidences attributable to emissions from the Steel Pickling source category because there were no emissions of any HAP with cancer dose-response values (*i.e.,* no known carcinogens are emitted from these sources). As shown in Table F.1, the maximum chronic non-cancer TOSHI value could be as high as 2. The maximum off-facility-site acute HQ value could be as high as 0.4, based on the actual emissions level and the REL value for chlorine. As our analysis of potential differences between actual emission levels and emissions allowable under the MACT standards indicate, actual emissions are approximately the same as MACT-allowable emissions, and the risk results for actual emissions are approximately the same as those for MACT-allowable emissions.

Table F.2 displays the results of the facility-wide risk assessment. This assessment was conducted based on actual emission levels for the 51 modeled facilities.

TABLE F.2—STEEL PICKLING FACILITY-WIDE RISK ASSESSMENT RESULTS

Maximum Facility-Wide Individual Cancer Risk (in 1 million)	100
Steel Pickling source category contribution to this maximum facility-wide individual cancer risk	[1] NA
Maximum Facility-Wide Chronic Non-cancer TOSHI	10
Steel Pickling source category contribution to this maximum facility-wide chronic non-cancer TOSHI [2]	< 1%

[1] The Steel Pickling source category does not contribute to the facility-wide cancer risks, as the facilities in this source category do not report emissions of any HAP with cancer dose-response values.
[2] Percentage shown reflects Steel Pickling source category contribution to the maximum facility-wide risks at the facility with the maximum risk value shown.

The maximum individual cancer risk from all HAP emissions at a facility that contains sources subject to the Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants MACT standards is estimated to be 100-in-1 million, and the maximum chronic non-cancer TOSHI value is estimated to be 10. As noted previously, there were no emissions of any HAP with cancer dose-response values from the Steel Pickling source category; therefore, this source category does not contribute to the maximum facility-wide cancer risk of 100-in-1 million. At the facility where the maximum TOSHI risk value occurs, the estimated proportion of the risk attributable to the Steel Pickling source category processes is less than one percent. The highest facility-wide cancer risk for a facility that includes a steel pickling or HCL regeneration source is primarily driven by iron and steel processes and coke oven emissions. The iron and steel processes will be addressed in a future residual risk review, some coke oven processes (charging, top side, and door leaks) have been addressed in a previous rulemaking action (70 FR 19992), and other coke oven processes (pushing, quenching, and battery stacks) will be addressed in a future residual risk review.

The results of the demographic analyses performed to investigate the distribution of TOSHI greater than 1, based on actual emissions levels for the population living within 5 km of the facilities, among various demographic groups are provided in a report available in the docket for this action and summarized in Table F.3 below.

TABLE F.3—STEEL PICKLING DEMOGRAPHIC RISK ANALYSIS RESULTS

Emissions basis	Maximum respiratory hazard index	Population with TOSHI greater than 1-in-1 million							
		Total (millions)	Minority %	African American %	Other and multiracial %	Hispanic or Latino %	Native American %	Below the poverty level %	Over 25 W/O a HS diploma %
Nationwide	n/a	175	32	16	15	16	0.6	13	13
Source Category	2	0.000045	0	0	0	9	0	6	9
Facility-wide	10	0.0017	41	34	6	1	0.2	11	13

The results of the Steel Pickling source category demographic analysis show that there are 45 people exposed to an HI of one or greater from the source category and 1,700 people exposed to an HI of one or greater for the facility-wide emissions. Of this relatively small number of people for the source category, none of the groups shows a disparate impact compared to the national distribution of non-cancer risk. The facility-wide analysis shows a higher percentage population with an HI of one or more only for those that could be classified as a "Minority" and for those included in the "African American" demographic group.

Details of these assessments and analyses can be found in the residual risk documentation as referenced in section IV.A of this preamble, which is available in the docket for this action.

4. What are our proposed decisions on risk acceptability and ample margin of safety?

a. Risk Acceptability

The Steel Pickling source category does not emit HAP that are known, probable, or possible carcinogens; therefore, based on actual and MACT-allowable emission levels, cancer risks are less than 1-in-1 million to the individual most exposed. The analyses we performed for this proposal show no potential for an adverse environmental effect or human health multi-pathway effects, and that acute non-cancer health impacts are unlikely. We determined that emissions from the Steel Pickling source category would result in chronic non-cancer TOSHI approximately equal to 2 for the individual most exposed based on either actual emissions or MACT-allowable emissions. This HI value is for one facility, which has had compliance issues with the MACT standards. The emissions data used in our analysis include emissions that are in excess of what is allowed by the MACT standards. Work is underway between this facility, OECA at EPA, and the State to improve compliance. The next highest HI from any facility in the source category is 0.1. Based on this, we do not anticipate that MACT-allowable emissions for the sources in this category, or actual emissions when a source is in compliance with the MACT standards, would result in adverse chronic non-cancer health effects. Our additional analysis of facility-wide risks showed that the maximum facility-wide cancer risk is 100-in-1 million and the maximum facility-wide non-cancer TOSHI is 10. It also showed that the steel pickling processes located at the facilities with these maximum risk values did not contribute to the cancer risk and contributed less than 1 percent to these non-cancer risks. Our additional analysis of the demographics of the exposed population may show disparities in risks between demographic groups. Based on this cancer risk level and in consideration of other health measures and factors, including the cancer incidence (no cases) and the low maximum non-cancer risk level (TOSHI of 0.2), the lack of disparate impacts in the demographic analysis, and the small contribution to the facility-wide risks, we propose that the risks from the Steel Pickling source category are acceptable.

b. Ample Margin of Safety

We are proposing that the risks are acceptable, and while cancer risks were not above 1-in-1 million (the level at which we generally perform an ample margin of safety analysis), we decided to consider other factors before making a decision regarding the need for standards to reduce risks.

Based on these analyses, we continue to propose that the current MACT standards provide an ample margin of safety to protect public health and the environment, and we are proposing to re-adopt the existing MACT standards to satisfy section 112(f) of the CAA.

5. What are our proposed decisions on the technology review?

We evaluated developments in practices, processes, and control technologies applicable to the Steel Pickling source category. This included a search of the RBLC and the internet. The only advancement that we identified was one technology that is being used instead of steel pickling for some applications which is called the smooth clean surface (SCS) process. The SCS process uses patented roller brushes to remove scale from steel sheets and coils. However, this technology leaves the last layer of scale, resulting in a product that is rust-resistant, but is not conducive to in-line galvanizing, painting, enameling or electrolytic plating. Additionally, some types of forming, including hydroforming, cold reduction and deep draw cannot be used with SCS treated steel. It is therefore not a viable replacement for steel pickling operations. Another technology, eco pickled surface (EPS), could potentially become a low-emission alternative for steel pickling. EPS blasts steel with an acid-free slurry which, like steel pickling, removes all layers of scale. However, EPS only became commercially available in 2009 and it is not yet a proven technology. Thus, it is premature to consider it as a replacement for steel pickling operations.

Because we determined that the only identified development is not technologically feasible at this time, we are proposing that it is not necessary to revise the MACT standards pursuant to section 112(d)(6).

6. What other actions are we proposing?

We propose to eliminate the SSM exemption in the Steel Pickling MACT standards. Consistent with *Sierra Club* v. *EPA,* EPA proposes that standards in this rule would apply at all times. We are proposing several revisions to 40 CFR part 63, subpart CCC regarding the standards that apply during periods of SSM. Specifically, we are proposing to revise Table 1 to indicate that the requirements in 40 CFR 63.6(e) of the *General Provisions* do not apply. The 40 CFR 63.6(e) requires owner or operators to act according to the general duty to "operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions." We are separately proposing to incorporate this general duty to minimize emissions into 40 CFR 63.1159(c). The 40 CFR 63.6(e) also requires the owner or operator of an affected source to develop a written SSM plan. We are proposing to remove the SSM plan requirement. We are also proposing to revise 40 CFR 63.1161 to specify the conditions for performance tests, to revise the SSM-associated reporting and recordkeeping requirements in 40 CFR 63.1164 and 40 CFR 63.1165 to require reporting and recordkeeping for periods of malfunction, and to revise Table 1 to specify that 40 CFR 63.6(f)(1), 40 CFR 63.7(e)(1), the last sentence of 40 CFR 63.8(d)(3), 40 CFR 63.10(b)(2)(i),(ii), (vi), and (v), 40 CFR 63.10(c)(10), (11), and (15), and 40 CFR 63.10(d)(5) of the *General Provisions* do not apply. In addition, we are proposing to promulgate an affirmative defense against civil penalties for exceedances of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense. EPA has attempted to ensure that we have not incorporated into proposed regulatory language any provisions that are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether there are any such provisions that we have inadvertently incorporated or overlooked.

VI. Summary of Proposed Actions

A. What actions are we proposing as a result of the technology reviews?

For the technology review for the chromium electroplating and anodizing source categories, we are proposing to amend the rules to prohibit the addition of PFOS-based WAFS to the electroplating or anodizing tanks. For these source categories, we are also proposing to require several housekeeping requirements to minimize emissions of chromium-laden fugitive dust from chromium electroplating operations and for owners and operators to incorporate these housekeeping procedures in the facility operation and maintenance plan. For MTVLO, we are proposing to lower the existing threshold for control of emissions from gasoline loading from 10 million bbl/yr to 1 million bbl/yr.

For the Group I Polymers and Resins, Pharmaceuticals Production, and Printing and Publishing Industry MACT standards, which were addressed in the October 10, 2008 proposal, we have reaffirmed our previous determinations that there have been no developments in practices, processes, or control technologies. Thus, we are continuing to propose that it is not necessary to revise the existing MACT requirements based on our CAA section 112(d)(6) review.

For the Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants source category, we have determined that there have been no developments in practices, processes, or control technologies since the promulgation of the MACT standards, and we are proposing that it is not necessary to revise the existing MACT requirements based on our CAA section 112(d)(6) review.

B. What actions are we proposing as a result of the residual risk reviews?

For the Epichlorohydrin Elastomers Production, Hypalon™ Production, Nitrile Butadiene Rubber Production, Polybutadiene Rubber Production, Styrene-Butadiene Rubber and Latex Production, MTVLO, Pharmaceuticals Production, and Printing and Publishing Industry MACT standards source categories, which were addressed in the October 10, 2008 proposal, we have reaffirmed our proposed determinations that the MACT standards for these source categories provide an ample margin of safety to protect public health and prevent adverse environmental effects. Thus, we are continuing to propose to re-adopt each of these standards for purposes of meeting the requirements of CAA sections 112(f)(2).

For the Hard Chromium Electroplating, Decorative Chromium Electroplating, Chromium Anodizing, and Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants MACT standards source categories, we propose that the MACT standards provide an ample margin of safety to protect public health and prevent adverse environmental effects. Thus, we are proposing to re-adopt these standards for the purpose of meeting the requirements of CAA section 112(f)(2).

C. What other actions are we proposing?

We propose to amend the Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, Group I Polymers and Resins, MTVLO, Pharmaceuticals Production, Printing and Publishing Industry, and Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants MACT standards to remove the language that exempts facilities from the emissions standards that would otherwise be applicable during periods of SSM, and to add an affirmative defense against civil penalties for exceedances of emission standards caused by malfunctions. These changes are being made to ensure these rules are consistent with the court's ruling in *Sierra Club* v. *EPA,* 551 F.3d 1019, which addressed similar provisions in the *General Provisions* that apply to many MACT standards.

We are also proposing requirements for two MACT standards under the authority of section 112(d)(2) and (3) of the CAA to address emission points for which emission standards were previously not developed. For the MTVLO MACT standard, we are proposing to add the requirement to perform submerged fill for existing facilities for two subcategories, those emitting less than 10/25 tons of HAP, and those located more than 0.5 miles from shore. For the Group I Polymers and Resins MACT standard source categories, we propose to add MACT standards limiting emissions from the back-end process operations from the Butyl Rubber Production subcategory, the Halobutyl Rubber Production subcategory, the Epichlorohydrin Rubber Production source category, the Nitrile Butadiene Rubber Production source category, and the Neoprene Rubber Production source category. We also propose to revise the MACT standards for front-end process vents from the Butyl Rubber Production subcategory, the Halobutyl Rubber Production subcategory, and the Ethylene Propylene Rubber Production source category by requiring control of HCl emissions resulting from the combustion of chlorinated organic compounds.

In addition, we are proposing minor changes to two MACT standards to improve compliance and correct errors. For the Chromium Electroplating MACT standard source categories, we are proposing to clarify that testing can be performed by either Method 306 or Method 306A, and we are proposing to revise Method 306B to correct inconsistencies between the amendments made to subpart N in 2004 (69 FR 42885) and Method 306B. In addition, to eliminate a discrepancy between the Chromium Electroplating MACT standard and the *General Provisions* to part 63, we are also proposing to revise the trigger for semiannual compliance reports to be consistent with *General Provisions* to part 63. For the Pharmaceuticals Production MACT standards, we are proposing to correct one typographical error.

VII. Request for Comments

We are soliciting comments on all aspects of this proposed action. All comments received during the comment period will be considered. In addition to general comments on the proposed actions, we are also interested in any additional data that may help to reduce the uncertainties inherent in the risk assessments. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Please see the following section for more information on submitting data.

VIII. Submitting Data Corrections

The facility-specific data used in the source category risk analyses, facility-wide analyses, and demographic analyses for each source category subject to this action are available for download on the RTR Web page at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* These data files include detailed information for each HAP emissions release point at each facility included in the source category and all other HAP emissions sources at these facilities (facility-wide emissions sources). However, it is important to note that the source category risk analysis included only those emissions tagged with the MACT code associated with the source category subject to the risk analysis.

If you believe the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide any "improved" data that you have, if

available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes. To submit comments on the data downloaded from the RTR Web page, complete the following steps:

1. Within this downloaded file, enter suggested revisions to the data fields appropriate for that information. The data fields that may be revised include the following:

Data element	Definition
Control Measure	Are control measures in place? (yes or no).
Control Measure Comment	Select control measure from list provided, and briefly describe the control measure.
Delete	Indicate here if the facility or record should be deleted.
Delete Comment	Describes the reason for deletion.
Emission Calculation Method Code For Revised Emissions.	Code description of the method used to derive emissions. For example, CEM, material balance, stack test, etc.
Emission Process Group	Enter the general type of emission process associated with the specified emission point.
Fugitive Angle	Enter release angle (clockwise from true North); orientation of the y-dimension relative to true North, measured positive for clockwise starting at 0 degrees (maximum 89 degrees).
Fugitive Length	Enter dimension of the source in the east-west (x-) direction, commonly referred to as length (ft).
Fugitive Width	Enter dimension of the source in the north-south (y-) direction, commonly referred to as width (ft).
Malfunction Emissions	Enter total annual emissions due to malfunctions (TPY).
Malfunction Emissions Max Hourly	Enter maximum hourly malfunction emissions here (lb/hr).
North American Datum	Enter datum for latitude/longitude coordinates (NAD27 or NAD83); if left blank, NAD83 is assumed.
Process Comment	Enter general comments about process sources of emissions.
REVISED Address	Enter revised physical street address for MACT facility here.
REVISED City	Enter revised city name here.
REVISED County Name	Enter revised county name here.
REVISED Emission Release Point Type	Enter revised Emission Release Point Type here.
REVISED End Date	Enter revised End Date here.
REVISED Exit Gas Flow Rate	Enter revised Exit Gas Flowrate here (ft^3/sec).
REVISED Exit Gas Temperature	Enter revised Exit Gas Temperature here (F).
REVISED Exit Gas Velocity	Enter revised Exit Gas Velocity here (ft/sec).
REVISED Facility Category Code	Enter revised Facility Category Code here, which indicates whether facility is a major or area source.
REVISED Facility Name	Enter revised Facility Name here.
REVISED Facility Registry Identifier	Enter revised Facility Registry Identifier here, which is an ID assigned by the EPA Facility Registry System.
REVISED HAP Emissions Performance Level Code.	Enter revised HAP Emissions Performance Level here.
REVISED Latitude	Enter revised Latitude here (decimal degrees).
REVISED Longitude	Enter revised Longitude here (decimal degrees).
REVISED MACT Code	Enter revised MACT Code here.
REVISED Pollutant Code	Enter revised Pollutant Code here.
REVISED Routine Emissions	Enter revised routine emissions value here (TPY).
REVISED SCC Code	Enter revised SCC Code here.
REVISED Stack Diameter	Enter revised Stack Diameter here (ft).
REVISED Stack Height	Enter revised Stack Height here (ft).
REVISED Start Date	Enter revised Start Date here.
REVISED State	Enter revised State here.
REVISED Tribal Code	Enter revised Tribal Code here.
REVISED Zip Code	Enter revised Zip Code here.
Shutdown Emissions	Enter total annual emissions due to shutdown events (TPY).
Shutdown Emissions Max Hourly	Enter maximum hourly shutdown emissions here (lb/hr).
Stack Comment	Enter general comments about emission release points.
Startup Emissions	Enter total annual emissions due to startup events (TPY).
Startup Emissions Max Hourly	Enter maximum hourly startup emissions here (lb/hr).
Year Closed	Enter date facility stopped operations.

2. Fill in the commenter information fields for each suggested revision (*i.e.,* commenter name, commenter organization, commenter e-mail address, commenter phone number, and revision comments).

3. Gather documentation for any suggested emissions revisions (*e.g.,* performance test reports, material balance calculations, *etc.*).

4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to Docket ID No. EPA–HQ–OAR–2010–0600 (through one of the methods described in the **ADDRESSES** section of this preamble). To expedite review of the revisions, it would also be helpful if you submitted a copy of your revisions to the EPA directly at *RTR@epa.gov* in addition to submitting them to the docket.

5. If you are providing comments on a facility with multiple source categories, you need only submit one file for that facility, which should contain all suggested changes for all source categories at that facility. We request that all data revision comments be submitted in the form of updated Microsoft® Access files, which are provided on the *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html* Web page.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a significant regulatory action because it raises novel legal and policy issues. Accordingly, EPA submitted this action to OMB for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

The proposed revisions to the SSM provisions for all of the standards being amended with this proposed rule will reduce the reporting burden associated with having to prepare and submit an SSM report. We are not proposing any new paperwork requirements to the Pharmaceuticals Production, Printing and Publishing Industry, and Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants MACT standards. Revisions and burden associated with amendments to the Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; Group I Polymers and Resins; and MTVLO MACT standards are discussed in the following paragraphs. The OMB has previously approved the information collection requirements contained in the existing regulations being amended with this proposed rule (*i.e.,* 40 CFR part 63, subparts N, U, Y, KK, CCC, and GGG) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. Burden is defined at 5 CFR 1320.3(b).

1. Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks MACT Standard

The ICR document prepared by EPA for the amendments to the Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks MACT standards has been assigned EPA ICR number 1611.08. Burden changes associated with these amendments would result from new recordkeeping and reporting requirements associated with the new housekeeping requirements being proposed with today's action. The estimated average burden per response is 11 hours; the frequency of response is annual for all respondents that must comply with the rule's reporting requirements and the estimated average number of likely respondents per year is 590. The cost burden to respondents resulting from the collection of information includes the total capital cost annualized over the equipment's expected useful life (about $171,000), a total operation and maintenance component (about $534,000 per year), and a labor cost component (about $500,000 per year).

2. Group I Polymers and Resins MACT Standard

The ICR document prepared by EPA for the amendments to the Group I Polymers and Resins MACT standards has been assigned EPA ICR number 2410.01. Burden changes associated with these amendments would result from new recordkeeping and reporting requirements associated with the new back-end process operation emission limits for epichlorohydrin, neoprene, nitrile butadiene rubber, and butyl rubber and the HCl emission limits from the front-end process vents for ethylene propylene rubber and butyl rubber being proposed with this action. The estimated average burden per response is 237 hours; the frequency of response is annual for all respondents that must comply with the rule's reporting requirements and the estimated average number of likely respondents per year is 19. The cost burden to respondents resulting from the collection of information includes the total capital cost annualized over the equipment's expected useful life (averaging $2,800), a total operation and maintenance component (averaging $1,000 per year), and a labor cost component (averaging $1.1 million per year).

3. Marine Tank Vessel Loading Operations MACT Standard

The ICR document prepared by EPA for the amendments to the MTVLO MACT standards has been assigned EPA ICR number 1679.08. Burden changes associated with these amendments would result from new recordkeeping and reporting requirements associated with the vapor recovery requirements being proposed with today's action. The estimated average burden per response is 46 hours; the frequency of response is annual for all respondents that must comply with the rule's reporting requirements and the estimated average number of likely respondents per year is 18. The cost burden to respondents resulting from the collection of information includes the total capital cost annualized over the equipment's expected useful life (averaging $3,780), a total operation and maintenance component (averaging $108 per year), and a labor cost component (averaging $165,000 per year).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes these ICR, under Docket ID number EPA–HQ–OAR–2010–0600. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 21, 2010, a comment to OMB is best assured of having its full effect if OMB receives it by November 22, 2010. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This proposed rule will not impose emission measurements or reporting requirements on small entities beyond those specified in existing regulations, nor does it change the level of any

emission standard for amendments to all of the MACT standards proposed today, with the exception of the proposed amendments to the hard and decorative chromium electroplating and chromium anodizing tanks MACT standard. The new housekeeping requirements and PFOS use restrictions proposed by these amendments to the hard and decorative chromium electroplating and chromium anodizing tanks MACT standard may impact small entities, but those impacts have been estimated to be nominal.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed rule does not contain a Federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The proposed rule would not result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any 1 year. The proposed rule imposes no enforceable duties on any State, local, or tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 or 205 of the UMRA.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments nor does it impose obligations upon them.

E. Executive Order 13132: Federalism

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the facilities subject to this action are owned or operated by State governments, and, because no new requirements are being promulgated, nothing in this proposal will supersede State regulations. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000), EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement. EPA has concluded that this proposed rule will not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effect on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This proposed rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action would not relax the control measures on existing regulated sources, and EPA's risk assessments (included in the docket for this proposed rule) demonstrate that the existing regulations are health protective.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" as defined under EO 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not likely to have significant adverse effect on the supply, distribution, or use of energy. This action will not create any new requirements for sources in the energy supply, distribution, or use sectors.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

To examine the potential for any environmental justice issues that might be associated with each source category, we evaluated the distributions of HAP-related cancer and non-cancer risks across different social, demographic, and economic groups within the populations living near the facilities where these source categories are located. The methods used to conduct demographic analyses for this rule are described in section IV.A of the preamble for this rule. The development of demographic analyses to inform the consideration of environmental justice issues in EPA rulemakings is an evolving science. The EPA offers the demographic analyses in this rulemaking as examples of how such analyses might be developed to inform such consideration, and invites public

comment on the approaches used and the interpretations made from the results, with the hope that this will support the refinement and improve utility of such analyses for future rulemakings.

For this analysis, we analyzed risks due to the inhalation of HAP in two separate ways. In the first approach, we focus the analysis on the total populations residing within 5 km of each facility (source category and facility-wide), regardless of their estimated risks, and examine the distributions of estimated risk across the various demographic groups within those 5 km circles. In the other, we focus the analysis only on the populations within 5 km of any facility who are estimated to have HAP exposures which result in cancer risks of 1-in-1 million or greater or non-cancer HI of 1 or greater (based on the emissions of the source category or the facility, respectively), once again examining the distributions of those risks across various demographic groups. In each approach, we compare the percentages of particular demographic groups to the total number of people in those demographic groups. In this preamble, we only present the results of the second approach since it focuses on the significant risks from either the source category or the facility-wide emissions. The results of both approaches are documented in memos to the docket for each of the source categories covered in this proposal.

As described in the preamble, for the Epichlorohydrin Elastomers Production, Hypalon ™ Production, Nitrile Butadiene Rubber Production, Polybutadiene Rubber Production, Styrene-Butadiene Rubber and Latex Production, MTVLO, Pharmaceuticals Production, and Printing and Publishing Industry MACT standard source categories, which were addressed in the October 10, 2008, proposal, we have reaffirmed our proposed determinations that the MACT standards for these source categories provide an ample margin of safety to protect public health and prevent adverse environmental effects. For the Hard Chromium Electroplating, Decorative Chromium Electroplating, Chromium Anodizing, and Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants MACT standard source categories, we propose the MACT standards provide an ample margin of safety to protect public health and prevent adverse environmental effects.

Our analyses also show that, for all the source categories evaluated, there is no potential for an adverse environmental effect or human health multipathway effects, and that acute and chronic non-cancer health impacts are unlikely. Our additional analysis of facility-wide risks showed that the maximum facility-wide cancer risks for all source categories are within the range of acceptable risks, and that the maximum chronic non-cancer risks are unlikely to cause health impacts. Our additional analysis of the demographics of the exposed population may show disparities in risks between demographic groups for all three categories; EPA has determined that, although there may be a disparity in risks between demographic groups, no group is exposed to unacceptable level of risk. The proposed rule would not relax the control measures on sources regulated by the rule, and, therefore, would not increase risks to any populations exposed to these sources.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 14, 2010.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend title 40, chapter I of the Code of Federal Regulations as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart N—[Amended]

2. Section 63.341 is amended by:

a. Adding, in alphabetical order in paragraph (a), definitions for "affirmative defense," "contains hexavalent chromium," and "perfluorooctyl sulfonate (PFOS)-based fume suppressant"; and

b. Revising paragraph (b)(10) to read as follows:

§ 63.341 Definitions and nomenclature.

(a) * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or a defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

Contains hexavalent chromium means, the substance consists of, or contains 0.1 percent or greater by weight, chromium trioxide, chromium (VI) oxide, chromic acid, or chromic anhydride.

* * * * *

Perfluorooctyl sulfonate (PFOS)-based fume suppressant means a fume suppressant that contains 1 percent or greater PFOS by weight.

* * * * *

(b) * * *

(10) VR_{tot} = the average total ventilation rate for the three test runs as determined at the outlet by means of the Method 306 or 306A testing specified in appendix A of this part in dscm/min.

3. Section 63.342 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b)(1);

c. Adding paragraph (c)(1)(iv);

d. Adding paragraph (c)(2)(vi);

e. Adding paragraph (d)(3);

f. Redesignating paragraphs (e)(2) and (e)(3) as paragraphs (e)(3) and (e)(4);

g. Adding new paragraph (e)(2);

h. Revising newly designated paragraph (e)(4);

i. Adding paragraph (f)(3)(i)(F); and

j. Adding Table 2 to read as follows:

§ 63.342 Standards.

(a)(1) At all times, each owner or operator must operate and maintain any affected source subject to the requirements of this subpart, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by this standard have been achieved. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(2) Each owner or operator of an affected source subject to the provisions of this subpart shall comply with these requirements in this section on and after the compliance dates specified in § 63.343(a). All affected sources are regulated by applying maximum achievable control technology.

* * * * *

(b) * * *

(1) The emission limitations in this section apply during tank operation as defined in § 63.341, and during periods of startup and shutdown as these are

routine occurrences for affected sources subject to this subpart. In response to an action to enforce the standards set forth in this subpart, you may assert a civil defense to a claim for civil penalties for exceedances of such standards that are caused by a malfunction, as defined in 40 CFR 63.2. Appropriate penalties may be assessed, however, if the respondent fails to meet its burden of proving all the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(i) To establish the affirmative defense in any action to enforce such a limit, the owners or operators of facilities must timely meet the notification requirements of paragraph (b)(1)(ii) of this section, and must prove by a preponderance of evidence that:

(A) The excess emissions were caused by a sudden, short, infrequent, and unavoidable failure of air pollution control and monitoring equipment, or of a process to operate in a normal an usual manner; and could not have been prevented through careful planning, proper design or better operation and maintenance practices; and did not stem from any activity or event that could have been foreseen and avoided, or planned for; and were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(B) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(C) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(D) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, severe personal injury, or severe property damage; and

(E) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment, and human health; and

(F) All emissions monitoring and control systems were kept in operation if at all possible; and

(G) Your actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(H) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions; and

(I) The owner or operator has prepared a written root cause analysis to determine, correct and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using the best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(ii) *Notification.* The owner or operator of the facility experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later than two business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 30 days of the initial occurrence of the exceedance of the standard in this subpart to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (b)(1)(i) of this section.

* * * * *

(c)(1) * * *

(iv) After 3 years from date of publication of the final rule amendments in the **Federal Register**, the owner or operator of an affected open surface hard chromium electroplating tank shall not add PFOS-based fume suppressants to any affected open surface hard chromium electroplating tank.

* * * * *

(2) * * *

(vi) After 3 years from date of publication of the final rule amendments in the **Federal Register**, the owner or operator of an affected enclosed hard chromium electroplating tank shall not add PFOS-based fume suppressants to any affected enclosed hard chromium electroplating tank.

* * * * *

(d) * * *

(3) After 3 years from date of publication of the final rule amendments in the **Federal Register**, the owner or operator of an affected decorative chromium electroplating tank or an affected chromium anodizing tank shall not add PFOS-based fume suppressants to any affected decorative chromium electroplating tank or chromium anodizing tank.

(e) * * *

(2) After 3 years from date of publication of the final rule amendments in the **Federal Register**, the owner or operator of an affected decorative chromium electroplating tank using a trivalent chromium bath shall not add PFOS-based fume suppressants to any affected decorative chromium electroplating tank.

* * * * *

(4) Each owner or operator of an existing, new, or reconstructed decorative chromium electroplating tank that had been using a trivalent chromium bath that incorporated a wetting agent and ceases using this type of bath must fulfill the reporting requirements of § 63.347(i)(3) and comply with the applicable emission limitation within the timeframe specified in § 63.343(a)(7).

(f) * * *

(3) * * *

(i) * * *

(F) The plan shall include housekeeping procedures, as specified in Table 2 of this section.

* * * * *

TABLE 2 TO § 63.342—HOUSEKEEPING PRACTICES

For	You must:	At this minimum frequency
1. Any substance that contains hexavalent chromium.	(a) Store the substance in a closed container in an enclosed storage area; AND	At all times.
	(b) Use a closed container when transporting the substance from the enclosed storage area.	Whenever transporting substance.
2. Each affected tank, to minimize spills of bath solution that result from dragout.	(a) Install drip trays that collect and return to the tank any bath solution that drips or drains from parts as the parts are removed from the tank; OR	Prior to operating the tank.

TABLE 2 TO § 63.342—HOUSEKEEPING PRACTICES—Continued

For	You must:	At this minimum frequency
	(b) Contain and return to the tank all solution that drains or drips from parts as the parts are removed from the tank.	Whenever removing parts from an affected tank.
3. Each spraying operation for removing excess chromic acid from parts removed from an affected tank.	Install a splash guard to minimize overspray and to ensure that any hexavalent chromium laden liquid is returned to the electroplating or anodizing tank.	Prior to any such spraying operation.
4. Each operation that involves the handling or use of any substance that contains hexavalent chromium.	Clean up, or otherwise contain, all spills of the substance.	Within 1 hour of the spill.
5. All surfaces within the enclosed storage area, open floor area, walkways around affected tanks, or any surface potentially contaminated with hexavalent chromium that accumulates or potentially accumulates dust.	(a) Clean the surfaces using one or more of the following methods: (i) HEPA vacuuming; (ii) Hand-wiping with a damp cloth; (iii) Wet mopping; (iv) Other cleaning method approved by the permitting agency; OR	At least once every 7 days.
	(b) Apply a non-toxic chemical dust suppressant to the surfaces.	According to manufacturer's recommendations.
6. All buffing, grinding, or polishing operations.	Separate the operation from any affected electroplating or anodizing operation by installing a physical barrier; the barrier may take the form of plastic strip curtains.	Prior to beginning the buffing, grinding, or polishing operation.
7. All chromium or chromium-containing wastes generated from housekeeping activities.	Store, dispose, recover, or recycle the wastes using practices that do not lead to fugitive dust and in accordance with hazardous waste requirements.	At all times.

4. Section 63.343 is amended by adding paragraph (a)(8) to read as follows:

§ 63.343 Compliance provisions.

(a) * * *

(8) No later than 6 months from date of publication of the final amendments in the **Federal Register**, the owner or operator of an affected source that is subject to the standards in paragraphs § 63.342(c) or (d) shall implement the housekeeping procedures specified in Table 2 of § 63.342.

* * * * *

5. Section 63.344 is amended by:

a. Revising paragraph (a);

b. Revising paragraphs (e)(3)(iii), (e)(3)(iv), and (e)(3)(v); and

c. Revising paragraphs (e)(4)(ii) and (e)(4)(iv) to read as follows:

§ 63.344 Performance test requirements and test methods.

(a) *Performance test requirements.* Performance tests shall be conducted using the test methods and procedures in this section. Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests. Performance test results shall be documented in complete test reports that contain the information required by paragraphs (a)(1) through (9) of this section. The test plan to be followed shall be made available to the Administrator prior to the testing, if requested.

* * * * *

(e) * * *

(3) * * *

(iii) Perform Method 306 or 306A testing and calculate an outlet mass emission rate.

(iv) Determine the total ventilation rate from the affected sources (VR_{inlet}) by using equation 1:

$$VR_{tot} \times \frac{IDA_i}{\sum IA_{total}} = VR_{inlet} \qquad (1)$$

where VR_{tot} is the average total ventilation rate in dscm/min for the three test runs as determined at the outlet by means of the Method 306 or 306A testing; IDA_i is the total inlet area for all ducts associated with affected sources; ΣIA_{total} is the sum of all inlet duct areas from both affected and nonaffected sources; and VR_{inlet} is the total ventilation rate from all inlet ducts associated with affected sources.

(v) Establish the allowable mass emission rate of the system (AMR_{sys}) in milligrams of total chromium per hour (mg/hr) using equation 2:

$$\sum VR_{inlet} \times EL \times 60 \text{ minutes/hour} = AMR_{sys} \qquad (2)$$

where Σ VR_{inlet} is the total ventilation rate in dscm/min from the affected sources, and EL is the applicable emission limitation from § 63.342 in mg/dscm. The allowable mass emission rate (AMR_{sys}) calculated from equation 2 should be equal to or

more than the outlet three-run average mass emission rate determined from Method 306 or 306A testing in order for the source to be in compliance with the standard.

(4) * * *

(ii) Determine the total ventilation rate for each type of affected source ($VR_{inlet,a}$) using equation 3:

$$VR_{tot} \times \frac{IDA_{i,a}}{\sum IA_{total}} = VR_{inlet,a} \qquad (3)$$

where VR_{tot} is the average total ventilation rate in dscm/min for the three test runs as determined at the outlet by means of the Method 306 or 306A testing; $IDA_{i,a}$ is the total inlet duct area for all ducts conveying chromic acid from each type of affected source performing the same operation, or each type of affected source subject to the same emission limitation; ΣIA_{total} is the sum of all duct areas from both affected and nonaffected sources; and $VR_{inlet,a}$ is the total ventilation rate from all inlet ducts conveying chromic acid from each type of affected source performing the same operation, or each type of affected source subject to the same emission limitation.

* * * * *

(iv) Establish the allowable mass emission rate of the system (AMR_{sys}) in milligrams of total chromium per hour (mg/hr) using equation 8, including each type of affected source as appropriate:

$$AMR_{hcl} + AMR_{hc2} + AMR_{dc} + AMR_{ca} = AMR_{sys} \qquad (8)$$

The allowable mass emission rate calculated from equation 8 should be equal to or more than the outlet three-run average mass emission rate determined from Method 306 or 306A testing in order for the source to be in compliance with the standards.

* * * * *

6. Section 63.346 is amended by revising paragraphs (b)(4) and (b)(13) to read as follows:

§ 63.346 Recordkeeping requirements.

* * * * *

(b) * * *

(4) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.342(a)(1), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation;

* * * * *

(13) For sources using fume suppressants to comply with the standards, records of the date and time that fume suppressants are added to the electroplating or anodizing bath and records of the fume suppressant manufacturer and product name;

* * * * *

7. Section 63.347 is amended by:

a. Redesignating paragraphs (g)(3)(xii) and (g)(3)(xiii) as (g)(3)(xiii) and (g)(3)(xiv), respectively, and adding a new paragraph (g)(3)(xii);

c. Revising paragraphs (h)(2)(i) introductory text and (h)(2)(i)(A) to read as follows:

§ 63.347 Reporting requirements.

* * * * *

(g) * * *

(3) * * *

(xii) The number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.342(a)(1), including actions taken to correct a malfunction.

* * * * *

(h) * * *

(2) * * *

(i) If either of the following conditions is met, semiannual reports shall be prepared and submitted to the Administrator:

(A) The total duration of excess emissions (as indicated by the monitoring data collected by the owner or operator of the affected source in accordance with § 63.343(c)) is 1 percent or greater of the total operating time for the reporting period; or

* * * * *

8. Table 1 to Subpart N is amended by:

a. Removing entry 63.7(e);

b. Adding entries 63.7(e)(1) and 63.7(e)(2)–(4) to read as follows:

TABLE 1 TO SUBPART N OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART N

General provisions reference	Applies to Subpart N	Comment
* *	* *	* * *
63.7(e)(1)	No	See § 63.344(a). Any cross reference to § 63.7(e)(1) in any other general provision incorporated by reference shall be treated as a cross-reference to § 63.344(a).
63.7(e)(2)–(4)	Yes	Subpart N also contains test methods specific to affected sources covered by that subpart.
* *	* *	* * *

Subpart U—[Amended]

9. Section 63.480 is amended by revising paragraph (j) to read as follows:

§ 63.480 Applicability and designation of affected sources.

* * * * *

(j) *Applicability of this subpart.* Paragraphs (j)(1) through (4) of this section shall be followed during periods of non-operation of the affected source or any part thereof.

(1) The emission limitations set forth in this subpart and the emission limitations referred to in this subpart shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. However, if a period of non-operation of one portion of an affected source does not affect the ability of a particular emission point to comply with the emission limitations to which it is subject, then that emission

point shall still be required to comply with the applicable emission limitations of this subpart during period of non-operation.

(2) The emission limitations set forth in subpart H of this part, as referred to in § 63.502, shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which § 63.502 applies.

(3) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with this subpart during times when emissions (or, where applicable, wastewater streams or residuals) are being routed to such items of equipment if the shutdown would contravene requirements of this subpart applicable to such items of equipment.

(4) In response to an action to enforce the standards set forth in this subpart, you may assert a civil defense to a claim for civil penalties for exceedances of such standards that are caused by a malfunction, as defined in 40 CFR 63.2. Appropriate penalties may be assessed, however, if the respondent fails to meet its burden of proving all the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(i) To establish the affirmative defense in any action to enforce such a limit, the owners or operators of facilities must timely meet the notification requirements of paragraph (j)(4)(ii) of this section, and must prove by a preponderance of evidence that:

(A) The excess emissions were caused by a sudden, short, infrequent, and unavoidable failure of air pollution control and monitoring equipment, or a process to operate in a normal and usual manner; and could not have been prevented through careful planning, proper design, or better operation and maintenance practices; and did not stem from any activity or event that could have been foreseen and avoided, or planned for; and were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(B) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(C) The frequency, amount, and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(D) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, severe personal injury, or severe property damage; and

(E) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment, and human health; and

(F) All emissions monitoring and control systems were kept in operation if at all possible; and

(G) Your actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(H) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions; and

(I) The owner or operator has prepared a written root cause analysis to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using the best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(ii) *Notification.* The owner or operator of the facility experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later than 2 business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 30 days of the initial occurrence of the exceedance of the standard in this subpart to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (j)(4)(i) of this section.

10. Section 63.481 is amended by revising paragraph (c) to read as follows:

§ 63.481 Compliance dates and relationship of this subpart to existing applicable rules.

* * * * *

(c) With the exceptions provided in paragraphs (c)(1) through (4) of this section, existing affected sources shall be in compliance with this subpart no later than June 19, 2001, as provided in § 63.6(c), unless an extension has been granted as specified in paragraph (e) of this section.

(1) Existing affected sources producing epichlorohydrin elastomer, halobutyl rubber, neoprene rubber, and nitrile butadiene rubber shall be in compliance with the applicable emission limitation in § 63.494(a)(4) no later than 1 year from date of publication of the final rule amendments in the **Federal Register**.

(2) Existing affected sources producing butyl rubber shall be in compliance with § 63.494(a)(4)(i) no later than 3 years from date of publication of the final rule amendments in the **Federal Register**.

(3) Existing affected sources producing butyl rubber, halobutyl rubber, and ethylene propylene rubber shall be in compliance with § 63.485(q)(1) no later than 3 years from date of publication of the final rule amendments in the **Federal Register**.

(4) Compliance with § 63.502 is covered by paragraph (d) of this section.

* * * * *

11. Section 63.482 is amended by adding in alphabetical order a definition for "affirmative defense," and revising the definition of "initial start-up" in paragraph (b) to read as follows:

§ 63.482 Definitions.

* * * * *

(b) * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or a defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

Initial start-up means the first time a new or reconstructed affected source begins production of an elastomer product, or, for equipment added or changed as described in § 63.480(i), the first time the equipment is put into operation to produce an elastomer product. Initial start-up does not include operation solely for testing equipment. Initial start-up does not include subsequent start-ups of an affected source or portion thereof following shutdowns or following changes in product for flexible operation units or following recharging of equipment in batch operation.

* * * * *

12. Section 63.483 is amended by revising paragraph (a) to read as follows:

§ 63.483 Emission standards.

(a) At all times, each owner or operator must operate and maintain any affected source subject to the requirements of this subpart, including associated air pollution control equipment and monitoring equipment,

in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by this standard have been achieved. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source. Except as allowed under paragraphs (b) through (d) of this section, the owner or operator of an existing or new affected source shall comply with the provisions in:

(1) Section 63.484 for storage vessels;

(2) Section 63.485 for continuous front-end process vents;

(3) Sections 63.486 through 63.492 for batch front-end process vents;

(4) Sections 63.493 through 63.500 for back-end process operations;

(5) Section 63.501 for wastewater;

(6) Section 63.502 for equipment leaks;

(7) Section 63.504 for additional test methods and procedures;

(8) Section 63.505 for monitoring levels and excursions; and

(9) Section 63.506 for general reporting and recordkeeping requirements.

* * * * *

13. Section 63.484 is amended by revising paragraph (b)(4) to read as follows:

§ 63.484 Storage vessel provisions.

* * * * *

(b) * * *

(4) Storage vessels located downstream of the stripping operations at affected sources subject to the back-end residual organic HAP limitation located in § 63.494(a)(1) through (3), that are complying through the use of stripping technology, as specified in § 63.495;

* * * * *

14. Section 63.485 is amended by revising paragraphs (q) introductory text and (q)(1) introductory text to read as follows:

§ 63.485 Continuous front-end process vent provisions.

* * * * *

(q) Group 1 halogenated continuous front-end process vents must comply with the provisions of § 63.113(a)(1)(ii) and § 63.113(c), with the exceptions noted in paragraphs (q)(1) and (2) of this section.

(1) All Group 1 and Group 2 halogenated continuous front-end process vents at existing affected sources producing butyl rubber, halobutyl rubber, or ethylene propylene rubber using a solution process, must comply with § 63.113(a)(1)(ii) and § 63.113(c).

* * * * *

15. Section 63.489 is amended by revising paragraph (b)(4)(ii)(C) to read as follows:

§ 63.489 Batch front-end process vents—monitoring equipment.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(C) The owner or operator may prepare and implement a gas stream flow determination plan that documents an appropriate method which will be used to determine the gas stream flow. The plan shall require determination of gas stream flow by a method which will at least provide a value for either a representative or the highest gas stream flow anticipated in the scrubber during representative operating conditions. The plan shall include a description of the methodology to be followed and an explanation of how the selected methodology will reliably determine the gas stream flow, and a description of the records that will be maintained to document the determination of gas stream flow. The owner or operator shall maintain the plan as specified in § 63.506(a).

* * * * *

16. Section 63.491 is amended by revising paragraph (e)(2)(ii) to read as follows:

§ 63.491 Batch front-end process vents—recordkeeping requirements.

* * * * *

(e) * * *

(2) * * *

(ii) Monitoring data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in computing the batch cycle daily averages. In addition, monitoring data recorded during periods of non-operation of the EPPU (or specific portion thereof) resulting in cessation of organic HAP emissions shall not be included in computing the batch cycle daily averages.

* * * * *

17. Section 63.493 is revised to read as follows:

§ 63.493 Back-end process provisions.

Owners and operators of new and existing affected sources shall comply with the requirements in §§ 63.494 through 63.500. Owners and operators of affected sources whose only elastomer products are latex products, liquid rubber products, or products produced in a gas-phased reaction process are not subject to the provisions of §§ 63.494 through 63.500. If latex or liquid rubber products are produced in an affected source that also produces another elastomer product, the provisions of §§ 63.494 through 63.500 do not apply to the back-end operations dedicated to the production of one or more latex products or to the back-end operations during the production of a latex product.

18. Section 63.494 is amended by:

a. Revising the section heading;

b. Revising paragraph (a) introductory text;

c. Revising paragraph (a)(4) and the introductory text of paragraph (a)(5);

d. Adding paragraph (a)(6);

e. Revising paragraph (b);

f. Revising paragraph (c); and

g. Revising paragraph (d) to read as follows:

§ 63.494 Back-end process provisions—residual organic HAP and emission limitations.

(a) The monthly weighted average residual organic HAP content of all grades of styrene butadiene rubber produced by the emulsion process, polybutadiene rubber and styrene butadiene rubber produced by the solution process, and ethylene-propylene rubber produced by the solution process that is processed, shall be measured after the stripping operation [or the reactor(s), if the plant has no stripper(s)] as specified in § 63.495(d), and shall not exceed the limits provided in paragraphs (a)(1) through (3) of this section, as applicable. Owners or operators of these affected sources shall comply with the requirements of paragraphs (a)(1) through (3) of this section using either stripping technology or control or recovery devices. The organic HAP emissions from all back-end process operations at affected sources producing butyl rubber, epichlorohydrin elastomer, halobutyl rubber, neoprene, and nitrile butadiene rubber shall not exceed the limits determined in accordance with paragraph (a)(4) of this section, as applicable.

* * * * *

(4) The organic HAP emissions from back-end processes at affected sources producing butyl rubber, epichlorohydrin elastomer, halobutyl

rubber, neoprene, and nitrile butadiene rubber shall not exceed the limits determined in accordance with paragraphs (a)(4)(i) through (v) of this section for any consecutive 12-month period. The specific limitation for each elastomer type shall be determined based on the emissions level provided in paragraphs (a)(4)(i) through (v) of this section divided by the base year production level. The limitation shall be calculated and submitted in accordance with § 63.499(f)(1).

(i) For butyl rubber, the organic HAP emission limitation, in units of Mg organic HAP emissions per Mg of butyl rubber produced, shall be calculated by dividing 28 Mg/yr by the mass of butyl rubber produced in 2009, in Mg.

(ii) For epichlorohydrin elastomer, the organic HAP emission limitation, in units of Mg organic HAP emissions per Mg of epichlorohydrin elastomer produced, shall be calculated by dividing 36 Mg/yr by the mass of epichlorohydrin elastomer produced in 2009, in Mg.

(iii) For halobutyl rubber, the organic HAP emission limitation, in units of Mg organic HAP emissions per Mg of halobutyl rubber produced, shall be calculated by dividing 53 Mg/yr by the mass of halobutyl rubber produced in 2006, in Mg.

(iv) For neoprene, the organic HAP emission limitation, in units of Mg organic HAP emissions per Mg of neoprene produced, shall be calculated by dividing 23 Mg/yr by the mass of neoprene produced in 2009, in Mg.

(v) For nitrile butadiene rubber, the organic HAP emission limitation, in units of Mg organic HAP emissions per Mg of nitrile butadiene rubber produced, shall be calculated by dividing 1.7 Mg/yr by the mass of nitrile butadiene rubber produced in 2009, in Mg.

(5) For EPPU that produce both an elastomer product with a residual organic HAP limitation listed in paragraphs (a)(1) through (3) of this section, and a product listed in paragraphs (a)(5)(i) through (iv) of this section, only the residual HAP content of the elastomer product with a residual organic HAP limitation shall be used in determining the monthly average residual organic HAP content.

* * * * *

(6) There are no back-end process operation residual organic HAP or emission limitations for Hypalon™ and polysulfide rubber production. There are also no back-end process operation residual organic HAP limitations for latex products, liquid rubber products, products produced in a gas-phased reaction process, styrene butadiene rubber produced by any process other than a solution or emulsion process, polybutadiene rubber produced by any process other than a solution process, or ethylene-propylene rubber produced by any process other than a solution process.

(b) If an owner or operator complies with the residual organic HAP limitations in paragraph (a)(1) through (3) of this section using stripping technology, compliance shall be demonstrated in accordance with § 63.495. The owner or operator shall also comply with the recordkeeping provisions in § 63.498, and the reporting provisions in § 63.499.

(c) If an owner or operator complies with the residual organic HAP limitations in paragraph (a)(1) through (3) of this section using control or recovery devices, compliance shall be demonstrated using the procedures in § 63.496. The owner or operator shall also comply with the monitoring provisions in § 63.497, the recordkeeping provisions in § 63.498, and the reporting provisions in § 63.499.

(d) If the owner or operator complies with the residual organic HAP limitations in paragraph (a)(1) through (3) of this section using a flare, the owner or operator of an affected source shall comply with the requirements in § 63.504(c).

19. Section 63.495 is amended by:

a. Revising the section heading;

b. Revising paragraph (a);

c. Revising paragraph (b)(5); and

d. Adding paragraph (g) to read as follows:

§ 63.495 Back-end process provisions—procedures to determine compliance with residual organic HAP limitations using stripping technology and organic HAP emissions limitations.

(a) If an owner or operator complies with the residual organic HAP limitations in § 63.494(a)(1) through (3) using stripping technology, compliance shall be demonstrated using the periodic sampling procedures in paragraph (b) of this section, or using the stripper parameter monitoring procedures in paragraph (c) of this section. The owner or operator shall determine the monthly weighted average residual organic HAP content for each month in which any portion of the back-end of an elastomer production process is in operation. A single monthly weighted average shall be determined for all back-end process operations at the affected source.

(b) * * *

(5) The monthly weighted average shall be determined using the equation in paragraph (f) of this section. All representative samples taken and analyzed during the month shall be used in the determination of the monthly weighted average.

* * * * *

(g) Compliance with the organic HAP emission limitations determined in accordance with § 63.494(a)(4) shall be demonstrated in accordance with paragraphs (g)(1) through (5) of this section.

(1) Calculate your organic HAP emission limitation in accordance with § 63.494(a)(4)(i) through (v), as applicable, record it, and submit it in accordance with § 63.499(f)(1).

(2) Each month, calculate and record the organic HAP emissions from all back end process operations using engineering assessment. Engineering assessment includes, but is not limited to, the following:

(i) Previous test results, provided the test was representative of current operating practices.

(ii) Bench-scale or pilot-scale test data obtained under conditions representative of current process operating conditions.

(iii) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to:

(A) Use of material balances;

(B) Estimation of flow rate based on physical equipment design, such as pump or blower capacities;

(C) Estimation of organic HAP concentrations based on saturation conditions; and

(D) Estimation of organic HAP concentrations based on grab samples of the liquid or vapor.

(3) Each month, record the mass of elastomer product produced.

(4) Each month, calculate and record the sums of the organic HAP emissions and the mass of elastomer produced for the month and the previous 11 months.

(5) Each month, divide the total mass of organic HAP emitted for the 12-month period by the total mass of elastomer produced during the 12-month period. This value must be recorded in accordance with § 63.498(e) and reported in accordance with § 63.499(f)(2).

20. Section 63.496 is amended by:

a. Revising the section heading;

b. Revising paragraph (a);

c. Revising paragraph (c)(2); and

d. Revising paragraph (d) to read as follows:

§ 63.496 Back-end process provisions—procedures to determine compliance with residual organic HAP limitations using control or recovery devices.

(a) If an owner or operator complies with the residual organic HAP limitations in § 63.494(a)(1) through (3) using control or recovery devices, compliance shall be demonstrated using the procedures in paragraphs (b) and (c) of this section. Previous test results conducted in accordance with paragraphs (b)(1) through (6) of this section may be used to determine compliance in accordance with paragraph (c) of this section.

* * * * *

(c) * * *

(2) A facility is in compliance if the average of the organic HAP contents calculated for all three test runs is below the residual organic HAP limitations in § 63.494(a)(1) through (3).

(d) An owner or operator complying with the residual organic HAP limitations in § 63.494(a)(1) through (3) using a control or recovery device, shall redetermine the compliance status through the requirements described in paragraph (b) of this section whenever process changes are made. The owner or operator shall report the results of the redetermination in accordance with § 63.499(d). For the purposes of this section, a process change is any action that would reasonably be expected to impair the performance of the control or recovery device. For the purposes of this section, the production of an elastomer with a residual organic HAP content greater than the residual organic HAP content of the elastomer used in the compliance demonstration constitutes a process change, unless the overall effect of the change is to reduce organic HAP emissions from the source as a whole. Other examples of process changes may include changes in production capacity or production rate, or removal or addition of equipment. For the purposes of this paragraph, process changes do not include: Process upsets; unintentional, temporary process changes; or changes that reduce the residual organic HAP content of the elastomer.

21. Section 63.497 is amended by:

a. Revising the section heading to § 63.497;

b. Revising paragraph (a) introductory text; and

c. Revising paragraph (d) introductory text to read as follows:

§ 63.497 Back-end process provisions—monitoring provisions for control and recovery devices used to comply with residual organic HAP limitations.

(a) An owner or operator complying with the residual organic HAP limitations in § 63.494(a)(1) through (3) using control or recovery devices, or a combination of stripping and control or recovery devices, shall install the monitoring equipment specified in paragraphs (a)(1) through (6) of this section, as appropriate.

* * * * *

(d) The owner or operator of an affected source with a controlled back-end process vent using a vent system that contains bypass lines that could divert a vent stream away from the control or recovery device used to comply with § 63.494(a)(1) through (3) shall comply with paragraph (d)(1) or (2) of this section. Equipment such as low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and pressure relief valves needed for safety purposes are not subject to this paragraph.

* * * * *

22. Section 63.498 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (a)(3);

c. Adding paragraph (a)(4);

d. Revising paragraph (b) introductory text;

e. Revising paragraph (b)(3);

f. Revising paragraph (c) introductory text;

g. Revising paragraph (d) introductory text;

h. Revising paragraph (d)(5)(ii)(B);

i. Revising paragraph (d)(5)(ii)(E); and

j. Adding paragraph (e) to read as follows:

§ 63.498 Back-end process provisions—recordkeeping.

(a) Each owner or operator shall maintain the records specified in paragraphs (a)(1) through (3), and paragraphs (b) through (d) of this section, as appropriate.

* * * * *

(3) If the back-end process operation is subject to a residual organic HAP limitation in § 63.494(a)(1) through (3), whether compliance will be achieved by stripping technology, or by control or recovery devices.

(4) If the back-end process operation is subject to an emission limitation in § 63.494(a)(4), the organic HAP emission limitation calculated in accordance with § 63.494(a)(4)(i) through (v), as applicable.

(b) Each owner or operator of a back-end process operation using stripping technology to comply with a residual organic HAP limitation in § 63.494(a)(1) through (3), and demonstrating compliance using the periodic sampling procedures in § 63.495(b), shall maintain the records specified in paragraph (b)(1), and in paragraph (b)(2) or paragraph (b)(3) of this section, as appropriate.

* * * * *

(3) If the organic HAP contents for all samples analyzed during a month are below the appropriate level in § 63.494(a), the owner or operator may record that all samples were in accordance with the residual organic HAP limitations in § 63.494(a)(1) through (3), rather than calculating and recording a monthly weighted average.

(c) Each owner or operator of a back-end process operation using stripping technology to comply with a residual organic HAP limitation in § 63.494(a)(1) through (3), and demonstrating compliance using the stripper parameter monitoring procedures in § 63.495(c), shall maintain the records specified in paragraphs (c)(1) through (3) of this section.

* * * * *

(d) Each owner or operator of a back-end process operation using control or recovery devices to comply with a residual organic HAP limitation in § 63.494(a)(1) through (3) shall maintain the records specified in paragraphs (d)(1) through (5) of this section. The recordkeeping requirements contained in paragraphs (d)(1) through (4) pertain to the results of the testing required by § 63.496(b), for each of the three required test runs.

* * * * *

(5) * * *

(ii) * * *

(B) Monitoring data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in computing the hourly or daily averages. In addition, monitoring data recorded during periods of non-operation of the EPPU (or specific portion thereof) resulting in cessation of organic HAP emissions shall not be included in computing the hourly or daily averages. Records shall be kept of the times and durations of all such periods and any other periods of process or control device operation when monitors are not operating.

* * * * *

(E) For flares, records of the times and duration of all periods during which the pilot flame is absent shall be kept rather than daily averages. The records specified in this paragraph are not required during periods when emissions are not routed to the flare.

* * * * *

(e) If the back-end process operation is subject to an organic HAP emission limitation in § 63.494(a)(4), the records

specified in paragraphs (e)(1) through (4) of this section.

(1) The applicable organic HAP emission limitation determined in accordance with § 63.494(a)(4)(i) through (v).

(2) The organic HAP emissions from all back-end process operations for each month, along with documentation of all calculations and other information used in the engineering assessment to estimate these emissions.

(3) The mass of elastomer product produced each month.

(4) The total mass of organic HAP emitted for each 12-month period divided by the total mass of elastomer produced during the 12-month period, determined in accordance with § 63.495(g)(5).

23. Section 63.499 is amended by:

a. Revising paragraph (a)(3);

b. Revising paragraph (b) introductory text;

c. Revising paragraph (c) introductory text;

d. Revising paragraph (d) introductory text; and

e. Adding paragraph (f) to read as follows:

§ 63.499 Back-end process provisions—reporting.

(a) * * *

(3) If the back-end process operation is subject to a residual organic HAP limitation in § 63.494(a)(1) through (3), whether compliance will be achieved by stripping technology, or by control or recovery devices.

(b) Each owner or operator of a back-end process operation using stripping to comply with a residual organic HAP limitation in § 63.494(a)(1) through (3), and demonstrating compliance by stripper parameter monitoring, shall submit reports as specified in paragraphs (b)(1) and (2) of this section.

* * * * *

(c) Each owner or operator of an affected source with a back-end process operation control or recovery device that shall comply with a residual organic HAP limitation in § 63.494(a)(1) through (3) shall submit the information specified in paragraphs (c)(1) through (3) of this section as part of the Notification of Compliance Status specified in § 63.506(e)(5).

* * * * *

(d) Whenever a process change, as defined in § 63.496(d), is made that causes the redetermination of the compliance status for the back-end process operations subject to a residual organic HAP limitation in § 63.494(a)(1) through (3), the owner or operator shall submit a report within 180 days after the process change, as specified in § 63.506(e)(7)(iii). The report shall include:

* * * * *

(f) If the back-end process operation is subject to an organic HAP emission limitation in § 63.494(a)(4), the owner and operator must submit the information specified in paragraphs (f)(1) and (2) of this section.

(1) The applicable organic HAP emission limitation determined in accordance with § 63.494(a)(4)(i) through (v) shall be submitted no later than 180 days from the date of publication of the final rule amendments in the **Federal Register**.

(2) In the periodic report required to be submitted by § 63.506(e)(6), the total mass of organic HAP emitted for each of the rolling 12-month periods in the reporting period divided by the total mass of elastomer produced during the corresponding 12-month period, determined in accordance with § 63.495(g)(5).

24. Section 63.501 is amended by revising paragraph (c)(2) to read as follows:

§ 63.501 Wastewater provisions.

* * * * *

(c) * * *

(2) Back-end streams at affected sources that are subject to a residual organic HAP limitation in § 63.494(a)(1) through (3) and that are complying with these limitations through the use of stripping technology.

25. Section 63.502 is amended by revising paragraph (b)(4) to read as follows:

§ 63.502 Equipment leak and heat exchange system provisions.

* * * * *

(b) * * *

(4) Surge control vessels and bottoms receivers located downstream of the stripping operations at affected sources subject to the back-end residual organic HAP limitation located in § 63.494(a)(1) through (3), that are complying through the use of stripping technology, as specified in § 63.495;

* * * * *

§ 63.503 [Amended]

26. Section 63.503 is amended by removing and reserving paragraph (f)(1).

27. Section 63.504 is amended by revising paragraph (a)(1) introductory text to read as follows:

§ 63.504 Additional requirements for performance testing.

(a) * * *

(1) Performance tests shall be conducted at maximum representative operating conditions achievable during one of the time periods described in paragraph (a)(1)(i) of this section, without causing any of the situations described in paragraph (a)(1)(ii) of this section to occur. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

28. Section 63.505 is amended by:

a. Revising paragraph (e)(4);

b. Revising paragraph (g)(1)(v)(A);

c. Revising paragraph (g)(1)(v)(B);

d. Removing paragraphs (g)(1)(v)(C) through (g)(1)(v)(E);

e. Revising paragraph (g)(2)(ii)(B); and

f. Adding paragraph (j) to read as follows:

§ 63.505 Parameter monitoring levels and excursions.

* * * * *

(e) * * *

(4) An owner or operator complying with the residual organic HAP limitations in paragraphs (a)(1) through (3) of § 63.494 using stripping, and demonstrating compliance by stripper parameter monitoring, shall redetermine the residual organic HAP content for all affected grades whenever process changes are made. For the purposes of this section, a process change is any action that would reasonably be expected to impair the performance of the stripping operation. For the purposes of this section, examples of process changes may include changes in production capacity or production rate, or removal or addition of equipment. For purposes of this paragraph, process changes do not include: Process upsets; unintentional, temporary process changes; or changes that reduce the residual organic HAP content of the elastomer.

* * * * *

(g) * * *

(1) * * *

(v) * * *

(A) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments; or

(B) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(2) * * *

(ii) * * *

(B) Subtract the time during the periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments from the total amount of time determined in paragraph (g)(2)(ii)(A) of this section, to obtain the

operating time used to determine if monitoring data are insufficient.

* * * * *

(j) *Excursion definition for back-end operations subject to § 63.494(a)(4).* An excursion means when the total mass of organic HAP emitted for any consecutive 12-month period divided by the total mass of elastomer produced during the 12-month period, determined in accordance with § 63.495(g), is greater than the applicable emission limitation, determined in accordance with § 63.494(a)(4)(i) through (v) and submitted in accordance with § 63.499(f)(1).

29. Section 63.506 is amended by:

a. Revising paragraph (b)(1);

b. Revising paragraph (d)(7);

c. Revising paragraph (e)(3) introductory text;

d. Removing and reserving paragraph (e)(3)(viii);

e. Revising paragraph (e)(3)(ix)(B);

f. Revising paragraph (e)(6)(iii)(E);

g. Revising paragraph (h)(1)(i);

h. Revising paragraph (h)(1)(ii)(C);

i. Revising paragraph (h)(1)(iii);

j. Revising paragraph (h)(2)(iii); and

k. Removing and reserving paragraph (h)(2)(iv)(A) to read as follows:

§ 63.506 General recordkeeping and reporting provisions.

* * * * *

(b) * * *

(1) *Malfunction records.* Each owner or operator of an affected source subject to this subpart shall maintain records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment), air pollution control equipment, or monitoring equipment. Each owner or operator shall maintain records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.483(a)(1), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

* * * * *

(d) * * *

(7) Monitoring data recorded during periods identified in paragraphs (d)(7)(i) and (ii) of this section shall not be included in any average computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or control device or recovery device operation when monitors are not operating.

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments; or

(ii) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

* * * * *

(e) * * *

(3) *Precompliance Report.* Owners or operators of affected sources requesting an extension for compliance; requesting approval to use alternative monitoring parameters, alternative continuous monitoring and recordkeeping, or alternative controls; requesting approval to use engineering assessment to estimate emissions from a batch emissions episode, as described in § 63.488(b)(6)(i); wishing to establish parameter monitoring levels according to the procedures contained in § 63.505(c) or (d); shall submit a Precompliance Report according to the schedule described in paragraph (e)(3)(i) of this section. The Precompliance Report shall contain the information specified in paragraphs (e)(3)(ii) through (vii) of this section, as appropriate.

* * * * *

(viii) [Reserved]

(ix) * * *

(B) Supplements to the Precompliance Report may be submitted to request approval to use alternative monitoring parameters, as specified in paragraph (e)(3)(iii) of this section; to use alternative continuous monitoring and recordkeeping, as specified in paragraph (e)(3)(iv) of this section; to use alternative controls, as specified in paragraph (e)(3)(v) of this section; to use engineering assessment to estimate emissions from a batch emissions episode, as specified in paragraph (e)(3)(vi) of this section; or to establish parameter monitoring levels according to the procedures contained in § 63.505(c) or (d), as specified in paragraph (e)(3)(vii) of this section.

* * * * *

(6) * * *

(iii) * * *

(E) The number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.483(a)(1), including actions taken to correct a malfunction.

* * * * *

(h) * * *

(1) * * *

(i) The monitoring system is capable of detecting unrealistic or impossible data during periods of normal operation (*e.g.,* a temperature reading of −200 °C on a boiler), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(ii) * * *

(C) The running average reflects a period of normal operation.

(iii) The monitoring system is capable of detecting unchanging data during periods of normal operation, except in circumstances where the presence of unchanging data is the expected operating condition based on past experience (*e.g.,* pH in some scrubbers), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

* * * * *

(2) * * *

(iii) The owner or operator shall retain the records specified in paragraphs (h)(1)(i) through (iii) of this section, for the duration specified in paragraph (h) of this section. For any calendar week, if compliance with paragraphs (h)(1)(i) through (iii) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of normal operation.

(iv) * * *

(A) [Reserved]

* * * * *

30. Table 1 to Subpart U of part 63 is amended by:

a. Removing entry 63.6(e);

b. Revising entries 63.6(e)(1)(i) and 63.6(e)(1)(ii);

c. Revising entry 63.6(e)(2);

d. Adding entry 63.6(e)(3);

e. Removing entries 63.6(e)(3)(i) through 63.6(e)(3)(ix);

f. Revising entry 63.6(f)(1); and

e. Revising entries 63.7(e)(1) and 63.10(d)(5)(i) to read as follows:

TABLE 1 TO SUBPART U OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART U AFFECTED SOURCES

Reference	Applies to Subpart U	Explanation
*	* * * * * * *	
§ 63.6(e)(1)(i)	No	See § 63.483(a)(1) for general duty requirement. Any cross reference to § 63.6(e)(1)(i) in any other general provision incorporated by reference shall be treated as a cross reference to § 63.483(a)(1).
§ 63.6(e)(1)(ii)	No.	
*	* * * * * * *	
§ 63.6(e)(2)	No	[Reserved.]
§ 63.6(e)(3)	No.	
§ 63.6(f)(1)	No.	
*	* * * * * * *	
§ 63.7(e)(1)	No	See § 63.504(a)(1). Any cross-reference to § 63.7(e)(1) in any other general provision incorporated by reference shall be treated as a cross-reference to § 63.504(a)(1).
*	* * * * * * *	
63.10(d)(5)(i)	No.	
*	* * * * * * *	

Subpart Y—[Amended]

31–32. Section 63.560 is amended by:

a. Revising paragraphs (a)(1), (a)(2), and (a)(3);

b. Revising paragraph (d)(6);

c. Adding paragraph (e)(1)(iv);

d. Amending Table 1 to § 63.560 as follows:

i. Revising entry 63.6(f)(1);

ii. Removing entry 63.7(e);

iii. Adding entries 63.7(e)(1) and 63.7(e)(2)–(4);

iv. Removing entries 63.10(b)(2)(i) and (b)(2)(ii)–(iii);

v. Adding entries 63.10(b)(2)(i)–(ii) and (b)(2)(iii);

vi. Removing entry 63.10(c)(10)–(13); and

vii. Adding entries 63.10(c)(10)–(11) and 63.10(c)(12)–(13) to read as follows:

§ 63.560 Applicability and designation of affected source.

(a) * * *

(1) The provisions of this subpart pertaining to the MACT standards in § 63.562(b) and (d) of this subpart are applicable to existing and new sources with emissions of 10 or 25 tons, as that term is defined in § 63.561, except as specified in paragraph (d) of this section, and are applicable to new sources with emissions less than 10 and 25 tons, as that term is defined in § 63.561, except as specified in paragraphs (d) and (f) of this section.

(2) Existing sources with emissions less than 10 and 25 tons are not subject to the emissions standards in § 63.562(b) and (d), except as specified in paragraph (f) of this section.

(3) The recordkeeping requirements of § 63.567(j)(4) and the emission estimation requirements of § 63.565(l) apply to existing sources with emissions less than 10 and 25 tons, except as specified in paragraph (f) of this section.

* * * * *

(d) * * *

(6) The provisions of this subpart do not apply to marine tank vessel loading operations at existing offshore loading terminals, as that term is defined in § 63.561, except existing offshore loading terminals must meet paragraphs (d)(6)(i) and (ii) of this section.

(i) The submerged fill standards of 46 CFR 153.282, and

(ii) The provisions of § 63.562(f)(1) or § 63.562(f)(2), if the terminal loads more than 1 million barrels (M barrels) of gasoline.

* * * * *

(e) * * *

(1) * * *

(iv) New and existing sources with emissions less than 10 or 25 tons, that load more than 1 M barrels of gasoline shall comply with the provisions of § 63.562(f) by [DATE 3 YEARS FROM DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

* * * * *

TABLE 1 OF § 63.560—GENERAL PROVISIONS APPLICABILITY TO SUBPART Y

Reference	Applies to affected sources in subpart Y	Comment
*	* * * * * * *	
63.6(f)(1)	No.	
*	* * * * * * *	
63.7(e)(1)	No.	See 63.563(b)(1). Any cross reference to 63.7(e)(1) in any other general provision incorporated by reference shall be treated as a cross-reference to 63.563(b)(1).
63.7(e)(2)–(4)	Yes.	
*	* * * * * * *	
63.10 (b)(2)(i)–(ii)	No.	

TABLE 1 OF § 63.560—GENERAL PROVISIONS APPLICABILITY TO SUBPART Y—Continued

Reference	Applies to affected sources in subpart Y	Comment
*	* * * * * *	
63.10(b)(2)(iii)	Yes.	
*	* * * * * *	
63.10(c)(10)–(11)	No.	See 63.567(m)(1) for reporting malfunctions. Any cross-reference to 63.10(c)(10) or 63.10(c)(11) in any other general provision incorporated by reference shall be treated as a cross-reference to 63.567(m)(1).
63.10(c)(12)–(13)	Yes.	
*	* * * * * *	

33. Section 63.561 is amended by adding in alphabetical order a definition for "affirmative defense" to read as follows:

§ 63.561 Definitions.

* * * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or a defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

34. Section 63.562 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b)(1);

c. Revising paragraph (e) introductory text;

d. Adding paragraph (e)(7); and

e. Adding paragraph (f) to read as follows:

§ 63.562 Standards.

(a) The emissions limitations in paragraphs (b), (c), (d) and (f) of this section apply during marine tank vessel loading operations.

(b) *MACT standards, except for the VMT source*—(1)(i) Vapor collection system of the terminal. The owner or operator of a new source with emissions less than 10 and 25 tons, an existing or new source with emissions of 10 or 25 tons, and an existing source with emissions less than 10 and 25 tons that loads more than 1 M barrels of gasoline shall equip each terminal with a vapor collection system that is designed to collect HAP vapors displaced from marine tank vessels during marine tank vessel loading operations and to prevent HAP vapors collected at one loading berth from passing through another loading berth to the atmosphere, except for those commodities exempted under § 63.560(d).

(ii) *Ship-to-shore compatibility.* The owner or operator of a new source with emissions less than 10 and 25 tons, an existing or new source with emissions of 10 or 25 tons, and an existing source with emissions less than 10 and 25 tons that loads more than 1 million bbl/yr of gasoline shall limit marine tank vessel loading operations to those vessels that are equipped with vapor collection equipment that is compatible with the terminal's vapor collection system, except for those commodities exempted under § 63.560(d).

(iii) *Vapor tightness of marine vessels.* The owner or operator of a new source with emissions less than 10 and 25 tons, an existing or new source with emissions of 10 or 25 tons, and an existing source with emissions less than 10 and 25 tons that loads more than 1 million bbl/yr of gasoline shall limit marine tank vessel loading operations to those vessels that are vapor tight and to those vessels that are connected to the vapor collection system, except for those commodities exempted under § 63.560(d).

* * * * *

(e) Operation and maintenance requirements for air pollution control equipment and monitoring equipment for affected sources. At all times, owners or operators of affected sources shall operate and maintain a source, including associated air pollution control equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

* * * * *

(7) In response to an action to enforce the standards set forth in this subpart, you may assert a civil defense to a claim for civil penalties for exceedances of such standards that are caused by a malfunction, as defined in § 63.2. Appropriate penalties may be assessed, however, if the respondent fails to meet its burden of proving all the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(i) To establish the affirmative defense in any action to enforce such a limit, the owners or operators of facilities must timely meet the notification requirements of paragraph (e)(7)(ii) of this section, and must prove by a preponderance of evidence that:

(A) The excess emissions were caused by a sudden, short, infrequent, and unavoidable failure of air pollution control and monitoring equipment, or a process to operate in a normal and usual manner; and could not have been prevented through careful planning, proper design or better operation and maintenance practices; and did not stem from any activity or event that could have been foreseen and avoided, or planned for; and were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(B) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(C) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(D) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, severe personal injury, or severe property damage; and

(E) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment, and human health; and

(F) All emissions monitoring and control systems were kept in operation if at all possible; and

(G) Your actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(H) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions; and

(I) The owner or operator has prepared a written root cause analysis to determine, correct and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using the best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(ii) *Notification.* The owner or operator of the facility experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later 2 business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 30 days of the initial occurrence of the exceedance of the standard in this subpart to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (e)(7)(i) of this section.

(f) The owner or operator of an existing source, that is not located at a petroleum refinery, with emissions less than 10 and 25 tons that loads more than 1 million bbl/yr of gasoline shall:

(1) Limit emissions to not more than 10 mg of total organic compounds per liter of gasoline loaded; or

(2) Reduce captured emissions by at least 97 percent by weight.

35. Section 63.563 is amended by revising paragraphs (a) introductory text and (b)(1) to read as follows:

§ 63.563 Compliance and performance testing.

(a) The following procedures shall be used to determine compliance with the emissions limits under § 63.562(b)(1), (c)(2), (d)(1), and (f):

* * * * *

(b) * * *

(1) *Initial performance test.* An initial performance test shall be conducted using the procedures listed in § 63.7 of subpart A of this part according to the applicability in Table 1 of § 63.560, the procedures listed in this section, and the test methods listed in § 63.565. The initial performance test shall be conducted within 180 days after the compliance date for the specific affected source. During this performance test, sources subject to MACT standards under § 63.562(b)(2), (3), (4), and (5), and (d)(2) shall determine the reduction of HAP emissions, as VOC, for all combustion or recovery devices other than flares. Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests. Sources subject to RACT standards under § 63.562(c)(3), (4), and (5), and (d)(2) shall determine the reduction of VOC emissions for all combustion or recovery devices other than flares.

* * * * *

Subpart KK—[Amended]

36. Section 63.820 is amended by adding paragraph (c) to read as follows:

§ 63.820 Applicability.

* * * * *

(c) In response to an action to enforce the standards set forth in this subpart, you may assert a civil defense to a claim for civil penalties for exceedances of such standards that are caused by a malfunction, as defined in § 63.2. Appropriate penalties may be assessed, however, if the respondent fails to meet its burden of proving all the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(1) To establish the affirmative defense in any action to enforce such a limit, the owners or operators of facilities must timely meet the notification requirements of paragraph (c)(2) of this section, and must prove by a preponderance of evidence that:

(i) The excess emissions were caused by a sudden, short, infrequent, and unavoidable failure of air pollution control and monitoring equipment, or a process to operate in a normal an usual manner; and could not have been prevented through careful planning, proper design or better operation and maintenance practices; and did not stem from any activity or event that could have been foreseen and avoided, or planned for; and were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(ii) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(iii) The frequency, amount, and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(iv) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, severe personal injury, or severe property damage; and

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment, and human health; and

(vi) All emissions monitoring and control systems were kept in operation if at all possible; and

(vii) Your actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(viii) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions; and

(ix) The owner or operator has prepared a written root cause analysis to determine, correct and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using the best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(2) *Notification.* The owner or operator of the facility experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later 2 business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 30 days of the initial occurrence of the exceedance of the standard in this subpart to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (c)(1) of this section.

37. Section 63.822 is amended by adding in alphabetical order a definition for "affirmative defense" to paragraph (a) to read as follows:

§ 63.822 Definitions.

(a) * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or a defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

38. Section 63.823 is revised to read as follows:

§ 63.823 Standards: General.

(a) Table 1 to this subpart provides cross references to the 40 CFR part 63, subpart A, general provisions, indicating the applicability of the general provisions requirements to this subpart KK.

(b) Each owner or operator of an affected source subject to this subpart must at all times operate and maintain that affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

39. Section 63.827 is amended by adding introductory text to read as follows:

§ 63.827 Performance test methods.

Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

40. Section 63.829 is amended by adding paragraphs (g) and (h) to read as follows:

§ 63.829 Recordkeeping requirements.

* * * * *

(g) Each owner or operator of an affected source subject to this subpart shall maintain records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment), air pollution control equipment, or monitoring equipment.

(h) Each owner or operator of an affected source subject to this subpart shall maintain records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.823(b), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

41. Section 63.830 is amended by:

a. Removing and reserving paragraph (b)(5); and

b. Adding paragraph (b)(6)(v) to read as follows:

§ 63.830 Reporting requirements.

* * * * *

(b) * * *

(5) [Reserved]

(6) * * *

(v) The number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.823(b), including actions taken to correct a malfunction.

42. Table 1 to Subpart KK of part 63 is amended by:

a. Removing entry 63.6(e);

b. Adding entries 63.6(e)(1)(i), 63.6(e)(1)(ii); 63.6(e)(1)(iii), 63.6(e)(2), and 63.6(e)(3);

c. Removing entry 63.6(f);

d. Adding entries 63.6(f)(1) and 63.6(f)(2)–(f)(3);

e. Removing entry 63.7;

f. Adding entries 63.7(a)–(d), 63.7(e)(1), and 63.7(e)(2)–(e)(4);

g. Removing entry 63.8(d)–(f);

h. Adding entries 63.8(d)(1)–(2), 63.8(d)(3), and 63.8(e)–(f);

i. Removing entries 63.10(b)(1)–(b)(3), 63.10(c)(10)–(c)(15), and 63.10(d)(4)–(d)(5);

j. Adding entries 63.10(b)(1), 63.10(b)(2)(i), 63.10(b)(2)(ii), 63.10(b)(2)(iii), 63.10(b)(2)(iv)–(b)(2)(v), 63.10(b)(2)(vi)–(b)(2)(xiv), 63.10(b)(3), 63.10(c)(10), 63.10(c)(11), 63.10(c)(12)–(c)(14), 63.10(c)(15), 63.10(d)(4), and 63.10(d)(5) to read as follows:

TABLE 1 TO SUBPART KK OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KK

General provisions reference	Applicable to Subpart KK	Comment
*	* *	* * * * *
§ 63.6(e)(1)(i)	No	See 63.823(b) for general duty requirement. Any cross-reference to 63.6(e)(1)(i) in any other general provision incorporated by reference shall be treated as a cross-reference to 63.823(b).
§ 63.6(e)(1)(ii)	No.	
§ 63.6(e)(1)(iii)	Yes.	
§ 63.6(e)(2)	No	Section reserved.
§ 63.6(e)(3)	No.	
§ 63.6(f)(1)	No.	
§ 63.6(f)(2)–(f)(3)	Yes.	
*	* *	* * * * *
§ 63.7(a)–(d)	Yes.	
§ 63.7(e)(1)	No	See 63.827 introductory text. Any cross-reference to 63.7(e)(1) in any other general provision incorporated by reference shall be treated as a cross-reference to 63.827 introductory text.
§ 63.7(e)(2)–(e)(4)	Yes.	
*	* *	* * * * *
§ 63.8(d)(1)–(2)	Yes.	
§ 63.8(d)(3)	Yes, except for last sentence.	
§ 63.8(e)–(f)	Yes.	

TABLE 1 TO SUBPART KK OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KK—Continued

General provisions reference	Applicable to Subpart KK	Comment
*	* * * * * *	
§ 63.10(b)(1)	Yes.	
§ 63.10(b)(2)(i)	No.	
§ 63.10(b)(2)(ii)	No	See 63.829(g) for recordkeeping of occurrence and duration of malfunctions. See 63.829(h) for recordkeeping of actions taken during malfunction. Any cross-reference to 63.10(b)(2)(ii) in any other general provision incorporated by reference shall be treated as a cross-reference to 63.829(g).
§ 63.10(b)(2)(iii)	Yes.	
§ 63.10(b)(2)(iv)–(b)(2)(v)	No.	
§ 63.10(b)(2)(vi)–(b)(2)(xiv)	Yes.	
§ 63.10(b)(3)	Yes.	
*	* * * * * *	
§ 63.10(c)(10)	No	See 63.830(b)(6)(v) for reporting malfunctions. Any cross-reference to 63.10(c)(10) in any other general provision incorporated by reference shall be treated as a cross-reference to 63.830(b)(6)(v).
§ 63.10(c)(11)	No	See 63.830(b)(6)(v) for reporting malfunctions. Any cross-reference to 63.10(c)(11) in any other general provision incorporated by reference shall be treated as a cross-reference to 63.830(b)(6)(v).
§ 63.10(c)(12)–(c)(14)	Yes.	
§ 63.10(c)(15)	No.	
*	* * * * * *	
§ 63.10(d)(4)	Yes.	
§ 63.10(d)(5)	No.	
*	* * * * * *	

Subpart CCC—[Amended]

43. Section 63.1155 is amended by adding paragraph (d) to read as follows:

§ 63.1155 Applicability.

* * * * *

(d) In response to an action to enforce the standards set forth in this subpart, you may assert a civil defense to a claim for civil penalties for exceedances of such standards that are caused by a malfunction, as defined in § 63.2. Appropriate penalties may be assessed, however, if the respondent fails to meet its burden of proving all the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(1) To establish the affirmative defense in any action to enforce such a limit, the owners or operators of facilities must timely meet the notification requirements of paragraph (d)(2) of this section, and must prove by a preponderance of evidence that:

(i) The excess emissions were caused by a sudden, short, infrequent, and unavoidable failure of air pollution control and monitoring equipment, or a process to operate in a normal an usual manner; and could not have been prevented through careful planning, proper design, or better operation and maintenance practices; and did not stem from any activity or event that could have been foreseen and avoided, or planned for; and were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(ii) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(iii) The frequency, amount, and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(iv) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, severe personal injury, or severe property damage; and

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment, and human health; and

(vi) All emissions monitoring and control systems were kept in operation if at all possible; and

(vii) Your actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(viii) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions; and

(ix) The owner or operator has prepared a written root cause analysis to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using the best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(2) *Notification.* The owner or operator of the facility experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later 2 business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 30 days of the initial occurrence of the exceedance of the standard in this subpart to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (d)(1) of this section.

44. Section 63.1156 is amended by adding in alphabetical order a definition for "affirmative defense" to read as follows:

§ 63.1156 Definitions.

* * * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or a defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

45. Section 63.1159 is amended by adding paragraph (c) to read as follows:

§ 63.1159 Operational and equipment standards for existing, new, or reconstructed sources.

* * * * *

(c) At all times, each owner or operator must operate and maintain any affected source subject to the requirements of this subpart, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by this standard have been achieved. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

46. Section 63.1160 is amended by revising paragraph (b) to read as follows:

§ 63.1160 Compliance dates and maintenance requirements.

* * * * *

(b) *Maintenance requirements.* (1) The owner or operator shall prepare an operation and maintenance plan for each emission control device to be implemented no later than the compliance date. The plan shall be incorporated by reference into the source's title V permit. All such plans must be consistent with good maintenance practices, and, for a scrubber emission control device, must at a minimum:

(i) Require monitoring and recording the pressure drop across the scrubber once per shift while the scrubber is operating in order to identify changes that may indicate a need for maintenance;

(ii) Require the manufacturer's recommended maintenance at the recommended intervals on fresh solvent pumps, recirculating pumps, discharge pumps, and other liquid pumps, in addition to exhaust system and scrubber fans and motors associated with those pumps and fans;

(iii) Require cleaning of the scrubber internals and mist eliminators at intervals sufficient to prevent buildup of solids or other fouling;

(iv) Require an inspection of each scrubber at intervals of no less than 3 months with:

(A) Cleaning or replacement of any plugged spray nozzles or other liquid delivery devices;

(B) Repair or replacement of missing, misaligned, or damaged baffles, trays, or other internal components;

(C) Repair or replacement of droplet eliminator elements as needed;

(D) Repair or replacement of heat exchanger elements used to control the temperature of fluids entering or leaving the scrubber; and

(E) Adjustment of damper settings for consistency with the required air flow.

(v) If the scrubber is not equipped with a viewport or access hatch allowing visual inspection, alternate means of inspection approved by the Administrator may be used.

(vi) The owner or operator shall initiate procedures for corrective action within 1 working day of detection of an operating problem and complete all corrective actions as soon as practicable. Procedures to be initiated are the applicable actions that are specified in the maintenance plan. Failure to initiate or provide appropriate repair, replacement, or other corrective action is a violation of the maintenance requirement of this subpart.

(vii) The owner or operator shall maintain a record of each inspection, including each item identified in paragraph (b)(2)(iv) of this section, that is signed by the responsible maintenance official and that shows the date of each inspection, the problem identified, a description of the repair, replacement, or other corrective action taken, and the date of the repair, replacement, or other corrective action taken.

(2) The owner or operator of each hydrochloric acid regeneration plant shall develop and implement a written maintenance program. The program shall require:

(i) Performance of the manufacturer's recommended maintenance at the recommended intervals on all required systems and components;

(ii) Initiation of procedures for appropriate and timely repair, replacement, or other corrective action within 1 working day of detection; and

(iii) Maintenance of a daily record, signed by a responsible maintenance official, showing the date of each inspection for each requirement, the problems found, a description of the repair, replacement, or other action taken, and the date of repair or replacement.

47. Section 63.1161 is amended by revising paragraph (a) introductory text to read as follows:

§ 63.1161 Performance testing and test methods.

(a) *Demonstration of compliance.* The owner or operator shall conduct an initial performance test for each process or emission control device to determine and demonstrate compliance with the applicable emission limitation according to the requirements in § 63.7 of subpart A of this part and in this section. Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

48. Section 63.1164 is amended by revising paragraph (c) to read as follows:

§ 63.1164 Reporting requirements.

* * * * *

(c) The number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded shall be stated in a semiannual report. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.1159(c), including actions taken to correct a malfunction. The report, to be certified by the owner or operator or other responsible official, shall be submitted semiannually and delivered or postmarked by the 30th day following the end of each calendar half.

49. Section 63.1165 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraph (a)(4);

c. Removing paragraph (a)(5) and redesignating paragraphs (a)(6) through (a)(11) as paragraphs (a)(5) through (a)(10) to read as follows:

§ 63.1165 Recordkeeping requirements.

(a) * * *

(1) The occurrence and duration of each malfunction of operation (*i.e.,* process equipment);

* * * * *

(4) Actions taken during periods of malfunction to minimize emissions in accordance with § 63.1259(c) and the dates of such actions (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation);

* * * * *

50. Table 1 to Subpart CCC is amended by:

a. Removing entry 63.6(a)–(g);

b. Adding entries 63.6(a)–(d), 63.6(e)(1)(i), 63.6(e)(1)(ii), 63.6(e)(1)(iii), 63.6(e)(2), 63.6(e)(3), 63.6(f)(1), 63.6(f)(2)–(3), 63.6(g);

c. Removing entry 63.7–63.9;

d. Adding entries 63.7, 63.8(a)–(c), 63.8(d)(1)–(2), 63.8(d)(3), and 63.8(e)–(f);

e. Removing entry 63.10(a)–(c);

f. Adding entries 63.10(a), 63.10(b)(1), 63.10(b)(2)(i), 63.10(b)(2)(ii), 63.10(b)(2)(iii), 63.10(b)(2)(iv)–(v), 63.10(b)(2)(vi)–(xvi), 63.10(b)(3), 63.10(c)(1)–(9), 63.10(c)(10), 63.10(c)(11), 63.10(c)(12)–(14), and 63.10(c)(15);

g. Removing entry 63.10(d)(4)–(5);

h. Adding entries 63.10(d)(4) and 63.10(d)(5) to read as follows:

TABLE 1 TO SUBPART CCC OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART CCC

Reference	Applies to Subpart CCC	Explanation
*	* *	* * * * *
63.6 (a)–(d)	Yes.	
63.6(e)(1)(i)	No	See § 63.1259(c) for general duty requirement. Any cross-reference to § 63.6(e)(1)(i) in any other general provision incorporated by reference shall be treated as a cross-reference to § 63.1259(c).
63.6(e)(1)(ii)	No.	
63.6(e)(1)(iii)	Yes.	
63.6(e)(2)	No	Section reserved.
63.6(e)(3)	No.	
63.6(f)(1)	No.	
63.6(f)(2)–(3)	Yes.	
63.6(g)	Yes.	
*	* *	* * * * *
63.7	Yes.	
63.8(a)–(c)	Yes.	
63.8(d)(1)–(2)	Yes.	
63.8(d)(3)	Yes, except for last sentence.	
63.8(e)–(f)	Yes.	
*	* *	* * * * *
63.10(a)	Yes.	
63.10(b)(1)	Yes.	
63.10(b)(2)(i)	No.	
63.10(b)(2)(ii)	No	See § 63.1265(a)(1) for recordkeeping of occurrence and duration of malfunctions. See § 63.1265(a)(4) for recordkeeping of actions taken during malfunction. Any cross-reference to § 63.10(b)(2)(ii) in any other general provision incorporated by reference shall be treated as a cross-reference to § 63.1265(a)(1).
63.10(b)(2)(iii)	Yes.	
63.10(b)(2)(iv)–(v)	No.	
63.10(b)(2)(vi)–(xiv)	Yes.	
63.10(b)(3)	Yes.	
*	* *	* * * * *
63.10(c)(1)–(9)	Yes.	
63.10(c)(10)	No	See § 63.1164(c) for reporting malfunctions. Any cross-reference to § 63.10(c)(10) in any other general provision incorporated by reference shall be treated as a cross-reference to § 63.1164(c).
63.10(c)(11)	No	See § 63.1164(c) for reporting malfunctions. Any cross-reference to § 63.10(c)(11) in any other general provision incorporated by reference shall be treated as a cross-reference to § 63.1164(c).
63.10(c)(12)–(c)(14)	Yes.	
63.10(c)(15)	No.	
63.10(d)(4)	Yes.	
63.10(d)(5)	No.	
*	* *	* * * * *

Subpart GGG—[Amended]

51. Section 63.1250 is amended by revising paragraph (g) to read as follows:

§ 63.1250 Applicability.

* * * * *

(g) *Applicability of this subpart.* (1) Each provision set forth in this subpart shall apply at all times, except that the provisions set forth in § 63.1255 of this subpart shall not apply during periods of nonoperation of the PMPU (or specific portion thereof) in which the lines are drained and depressurized

resulting in the cessation of the emissions to which § 63.1255 of this subpart applies.

(2) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with the emissions limitations of this subpart during times when emissions (or, where applicable, wastewater streams or residuals) are being routed to such items of equipment, if the shutdown would contravene emissions limitations of this subpart applicable to such items of equipment. This paragraph does not apply if the owner or operator must shut down the equipment to avoid damage to a PMPU or portion thereof.

(3) At all times, each owner or operator must operate and maintain any affected source subject to the requirements of this subpart, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by this standard have been achieved. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(4) In response to an action to enforce the standards set forth in this subpart, you may assert a civil defense to a claim for civil penalties for exceedances of such standards that are caused by a malfunction, as defined in § 63.2. Appropriate penalties may be assessed, however, if the respondent fails to meet its burden of proving all the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(i) To establish the affirmative defense in any action to enforce such a limit, the owners or operators of facilities must timely meet the notification requirements of paragraph (g)(4)(ii) of this section, and must prove by a preponderance of evidence that:

(A) The excess emissions were caused by a sudden, short, infrequent, and unavoidable failure of air pollution control and monitoring equipment, or a process to operate in a normal and usual manner; and could not have been prevented through careful planning, proper design, or better operation and maintenance practices; and did not stem from any activity or event that could have been foreseen and avoided, or planned for; and were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(B) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(C) The frequency, amount, and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(D) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, severe personal injury, or severe property damage; and

(E) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment, and human health; and

(F) All emissions monitoring and control systems were kept in operation if at all possible; and

(G) Your actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(H) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions; and

(I) The owner or operator has prepared a written root cause analysis to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using the best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(ii) *Notification.* The owner or operator of the facility experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later 2 business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 30 days of the initial occurrence of the exceedance of the standard in this subpart to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (g)(4)(i) of this section.

* * * * *

52. Section 63.1251 is amended by adding in alphabetical order a definition for "affirmative defense" to read as follow:

§ 63.1251 Definitions.

* * * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or a defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

53. Section 63.1255 is amended by revising paragraph (g)(4)(v)(A) to read as follow:

§ 63.1255 Standards: Equipment leaks.

* * * * *

(g) * * *

(4) * * *

(v) * * *

(A) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. The written procedures shall be included in a document that is maintained at the plant site. Reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

* * * * *

54. Section 63.1256 is amended by revising paragraph (a)(4)(i) introductory text, and removing paragraphs (a)(4)(iii) and (iv) to read as follows:

§ 63.1256 Standards: Wastewater.

* * * * *

(a) * * *

(4) * * *

(i) The owner or operator shall prepare a description of maintenance procedures for management of wastewater generated from the emptying and purging of equipment in the process during temporary shutdowns for inspections, maintenance, and repair (*i.e.,* a maintenance turnaround) and during periods which are not shutdowns (*i.e.,* routine maintenance). The descriptions shall be included in a document that is maintained at the plant site and shall:

* * * * *

55. Section 63.1257 is amended by revising paragraph (a) introductory text and the first sentence of paragraph (e)(2)(iii)(A)(*6*)(*ii*) to read as follows:

§ 63.1257 Test methods and compliance procedures.

(a) *General.* Except as specified in paragraph (a)(5) of this section, the procedures specified in paragraphs (c), (d), (e), and (f) of this section are

required to demonstrate initial compliance with §§ 63.1253, 63.1254, 63.1256, and 63.1252(e), respectively. The provisions in paragraphs (a)(2) through (3) apply to performance tests that are specified in paragraphs (c), (d), and (e) of this section. The provisions in paragraph (a)(5) of this section are used to demonstrate initial compliance with the alternative standards specified in §§ 63.1253(d) and 63.1254(c). The provisions in paragraph (a)(6) of this section are used to comply with the outlet concentration requirements specified in §§ 63.1253(c), 63.1254(a)(2)(i), and (a)(3)(ii)(B), 63.1254(b)(i), and 63.1256(h)(2). Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

(e) * * *

(2) * * *

(iii) * * *

(A) * * *

(*6*) * * *

(*ii*) The owner or operator may consider the inlet to the equalization tank as the inlet to the biological treatment process if the wastewater is conveyed by hard-piping from either the last previous treatment process or the point of determination to the equalization tank; and the wastewater is conveyed from the equalization tank exclusively by hard-piping to the biological treatment process and no treatment processes or other waste management units are used to store, handle, or convey the wastewater between the equalization tank and the biological treatment process; and the equalization tank is equipped with a fixed roof and a closed-vent system that routes emissions to a control device that meets the requirements of § 63.1256(b)(1)(i) through (iv) and § 63.1256(b)(2)(i). * * *

* * * * *

§ 63.1258 [Amended]

56. Section 63.1258 is amended by removing paragraph (b)(8)(iv).

57. Section 63.1259 is amended by revising paragraph (a)(3) to read as follows:

§ 63.1259 Recordkeeping requirements.

* * * * *

(a) * * *

(3) *Malfunction records.* Each owner or operator of an affected source subject to this subpart shall maintain records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment), air pollution control equipment, or monitoring equipment. Each owner or operator shall maintain records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.1250(g)(3), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

* * * * *

58. Section 63.1260 is amended by revising paragraph (i) to read as follows:

§ 63.1260 Reporting requirements.

* * * * *

(i) The number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.1250(g)(3), including actions taken to correct a malfunction.

* * * * *

59. Table 1 to Subpart GGG is amended by:

a. Removing entry 63.6(e);

b. Adding entries 63.6(e)(1)(i), 63.6(e)(1)(ii), 63.6(e)(1)(iii), 63.6(e)(2), and 63.6(e)(3);

c. Removing entry 63.6(f)–(g);

d. Adding entries 63.6(f)(1), 63.6(f)(2)–(3), 63.6(g);

e. Removing entry 63.7(e);

f. Adding entries 63.7(e)(1) and 63.7(e)(2)–(4);

g. Removing entry 63.8(d);

h. Adding entries 63.8(d)(1)–(2) and 63.8(d)(3).

i. Removing entry 63.10(c)–(d)(2);

j. Adding entries 63.10(c)(1)–(9), 63.10(c)(10), 63.10(c)(11), 63.10(c)(12)–(14), 63.10(c)(15), and 63.10(d)(1)–(2);

k. Removing entry 63.10(d)(4–5); and

l. Adding entries 63.10(d)(4) and 63.10(d)(5) to read as follows:

TABLE 1 TO SUBPART GGG OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART GGG

General provisions reference	Summary of requirements	Applies to Subpart GGG	Comments
*	* * *	* *	* *
§ 63.6(e)(1)(i)	Requirements during periods of startup, shutdown, and malfunction.	No	See 63.1250(g)(3) for general duty requirement. Any cross-reference to 63.6(e)(1)(i) in any other general provision incorporated by reference shall be treated as a cross-reference to 63.1250(g)(3).
§ 63.6(e)(1)(ii)	Malfunction correction requirements	No.	
§ 63.6(e)(1)(iii)	Enforceability of operation and maintenance requirements.	Yes.	
§ 63.6(e)(2)	Reserved	No	Section reserved.
§ 63.6(e)(3)	Startup, shutdown, and malfunction plan requirements.	No.	
*	* * *	* *	* *
63.6(f)(1)	Applicability of nonopacity emission standards	No.	
63.6(f)(2)–(3)	Methods of determining compliance and findings compliance.	Yes.	
63.6(g)	Use of an alternative nonopacity emission standard.	Yes.	

TABLE 1 TO SUBPART GGG OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART GGG—Continued

General provisions reference	Summary of requirements	Applies to Subpart GGG	Comments
*	* * * *	*	* *
63.7(e)(1)	Conduct of performance tests	No	See 63.1257(a) text. Any cross-reference to 63.7(e)(1) in any other general provision incorporated by reference shall be treated as a cross-reference to 63.1257(a).
63.7 (e)(2)–(4)	Performance tests requirements	Yes.	
*	* * * *	*	* *
63.8(d)(1)–(2)	CMS quality control program requirements	Yes.	
63.8(d)(3)	CMS quality control program recordkeeping requirements.	Yes, except for last sentence.	
*	* * * *	*	* *
63.10(c)(1)–(9)	Additional recordkeeping requirements for sources with continuous monitoring systems.	Yes.	
63.10(c)(10)	Malfunction recordkeeping requirement	No	Subpart GGG specifies recordkeeping requirements.
63.10(c)(11)	Malfunction corrective action recordkeeping requirement.	No	Subpart GGG specifies recordkeeping requirements.
63.10(c)(12)–(14)	Additional recordkeeping requirements for sources with continuous monitoring systems.	Yes.	
63.10(c)(15)	Additional SSM recordkeeping requirements	No.	
*	* * * *	*	* *
63.10(d)(1)–(2)	General reporting requirements	Yes.	
*	* * * *	*	* *
63.10(d)(4)	Progress report requirements	Yes.	
63.10(d)(5)	Startup, shutdown, and malfunction report requirements.	No	Subpart GGG specifies reporting requirements.
*	* * * *	*	* *

60. Appendix A to part 63, Method 306–B is amended by:

a. Revising paragraph 1.2;

b. Revising paragraph 6.1;

c. Revising paragraph 11.1;

d. Adding paragraphs 11.1.1 through 11.1.4.10; and

e. Revising paragraph 11.2.2 to read as follows:

Appendix A to Part 63—Test Methods

Method 306B—Surface Tension Measurement for Tanks Used at Decorative Chromium Electroplating and Chromium Anodizing Facilities

* * * * *

1.2 Applicability. This method is applicable to all chromium electroplating and chromium anodizing operations, and continuous chromium plating at iron and steel facilities where a wetting agent is used in the tank as the primary mechanism for reducing emissions from the surface of the plating solution.

* * * * *

6.1 Stalagmometer. Any commercially available stalagmometer or equivalent surface tension measuring device may be used to measure the surface tension of the plating or anodizing tank liquid provided the procedures specified in Section 11.1.2 are followed.

* * * * *

11.1 Procedure. The surface tension of the tank bath may be measured using a tensiometer, stalagmometer, or any other equivalent surface tension measuring device for measuring surface tension in dynes per centimeter.

11.1.1 If a tensiometer is used, the procedures specified in ASTM Method D 1331–89 must be followed.

11.1.2 If a stalagmometer is used, the procedures specified in Sections 11.1.2.1 through 11.1.2.3 must be followed.

11.1.2.1 Check the stalagmometer for visual signs of damage. If the stalagmometer appears to be chipped, cracked, or otherwise in disrepair, the instrument shall not be used.

11.1.2.2 Using distilled or deionized water and following the procedures provided by the manufacturer, count the number of drops corresponding to the distilled/deionized water liquid volume between the upper and lower etched marks on the stalagmometer. If the number of drops for the distilled/deionized water is not within ±1 drop of the number indicated on the instrument, the stalagmometer must be cleaned, using the procedures specified in Sections 11.1.4.1 through 11.1.4.10 of this method, before using the instrument to measure the surface tension of the tank liquid.

11.1.2.2.1 If the stalagmometer must be cleaned, as indicated in Section 11.1.2.2, repeat the procedure specified in Section 11.1.2.2 before proceeding.

11.1.2.2.2 If, after cleaning and performing the procedure in Section 11.1.2.2, the number of drops indicated for the distilled/deionized water is not within ±1 drop of the number indicated on the instrument, either use the number of drops corresponding to the distilled/deionized water volume as the reference number of drops, or replace the instrument.

11.1.3 Determine the surface tension of the tank liquid using the procedures specified by the manufacturer of the stalagmometer.

11.1.4 *Stalagmometer cleaning procedures.* The procedures specified in Sections 11.1.4.1 through 11.1.4.10 shall be used for cleaning a stalagmometer, as required by Section 11.1.2.2.

11.1.4.1 Set up the stalagmometer on its stand in a fume hood.

11.1.4.2 Place a clean 150 (mL) beaker underneath the stalagmometer and fill the beaker with reagent grade concentrated nitric acid.

11.1.4.3 Immerse the bottom tip of the stalagmometer (approximately 1 centimeter (0.5 inches)) into the beaker.

11.1.4.4 Squeeze the rubber bulb and pinch at the arrow up (1) position to collapse.

11.1.4.5 Place the bulb end securely on top end of stalagmometer and carefully draw the nitric acid by pinching the arrow up (1) position until the level is above the top etched line.

11.1.4.6 Allow the nitric acid to remain in stalagmometer for 5 minutes, then

carefully remove the bulb, allowing the acid to completely drain.

11.1.4.7 Fill a clean 150 mL beaker with distilled or deionized water.

11.1.4.8 Using the rubber bulb per the instructions in Sections 11.1.4.4 and 11.1.4.5, rinse and drain stalagmometer with deionized or distilled water.

11.1.4.9 Fill a clean 150 mL beaker with isopropyl alcohol.

11.1.4.10 Again using the rubber bulb per the instructions in Sections 11.1.4.4 and 11.1.4.5, rinse and drain stalagmometer twice with isopropyl alcohol and allow the stalagmometer to dry completely.

* * * * *

11.2.2 If a measurement of the surface tension of the solution is above the 45 dynes per centimeter limit when measured using a stalagmometer, above 35 dynes per centimeter when measured using a tensiometer, or above an alternate surface tension limit established during the performance test, the time interval shall revert back to the original monitoring schedule of once every 4 hours. A subsequent decrease in frequency would then be allowed according to Section 11.2.1.

* * * * *

[FR Doc. 2010–23839 Filed 10–20–10; 8:45 am]

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Federal Register

Thursday,
October 21, 2010

Part III

Department of Homeland Security

Coast Guard

33 CFR Parts 154, 155, and 156

46 CFR Parts 35 and 39

Marine Vapor Control Systems; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 154, 155, and 156

46 CFR Parts 35 and 39

[USCG–1999–5150]

RIN 1625–AB37

Marine Vapor Control Systems

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to increase maritime domain safety by revising existing safety regulations for facility and vessel vapor control systems (VCSs). The proposed changes would make VCS requirements more compatible with new Federal and State environmental requirements, reflect industry advancements in VCS technology, and codify the standards for the design and operation of a VCS at tank barge cleaning facilities. These changes would increase the safety of operations by regulating the design, installation, and use of VCSs, but would not require anyone to install or use VCSs.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before April 21, 2011 or reach the Docket Management Facility by that date. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before April 21, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–1999–5150 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. *See* the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

Collection of Information Comments: If you have comments on the collection of information discussed in section VI.D. of this notice of proposed rulemaking (NPRM), you must also send comments to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget. To ensure that your comments to OIRA are received on time, the preferred methods are by e-mail to *oira_submission@omb.eop.gov* (include the docket number and "Attention: Desk Officer for Coast Guard, DHS" in the subject line of the e-mail) or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

Viewing Incorporation by Reference Material: You may inspect the material proposed for incorporation by reference at room 1214, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–372–1422. Copies of the material are available as indicated in the "Incorporation by Reference" section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Ms. Sara Ju, Office of Operating and Environmental Standards, U.S. Coast Guard; telephone 202–372–1422, e-mail *Sara.S.Ju@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–1999–5150), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–1999–5150" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½; by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they have reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–1999–5150" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington,

DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

D. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

II. Abbreviations

ANSI American National Standards Institute
API American Petroleum Institute
ASTM American Society for Testing and Materials
CAA 90 U.S. Clean Air Act Amendments of 1990
CTAC Chemical Transportation Advisory Committee
DHS Department of Homeland Security
DOT Department of Transportation
EPA U.S. Environmental Protection Agency
HAP Hazardous air pollutant
IEC International Electrotechnical Commission
IMO International Maritime Organization
ISA International Standards Association
ISGOTT International Safety Guide for Oil Tankers and Terminals
MAWP Maximum allowable working pressure
MESG Maximum experimental safe gap
MISL Marine Information for Safety and Law Enforcement
MOCC Minimum oxygen concentration for combustion
MSC Coast Guard Marine Safety Center
NAICS North American Industry Classification System
NEPA National Environmental Policy Act of 1969
NFPA National Fire Protection Association
NPRM Notice of proposed rulemaking
NTTAA The National Technology Transfer and Advancement Act
NVIC Navigation and Vessel Inspection Circular
OCIMF Oil Companies International Marine Forum
OMB Office of Management and Budget
P&IDs Piping and instrumentation diagrams
PIC Person-in-charge
PPM Parts per million
psi Pounds per square inch
psia Pounds per square inch absolute
psig Pounds per square inch gauge
QDC Quick disconnect couplings
SIC Standard Industrial Classification
UFL Upper flammable limit
USCG U.S. Coast Guard
VCS Vapor control system
VOC Volatile organic compound

III. Basis and Purpose

This NPRM proposes amendments to 1990 Coast Guard regulations (final rule, 55 FR 25396; June 21, 1990) relating to facility and vessel vapor control systems (VCSs), and generally appearing in 33 CFR part 154, subpart E and in 46 CFR part 39. These regulations do not require any facility or vessel to control vapor or be equipped with a VCS, nor do they require a vessel to take away vapor from facilities. Instead, these regulations would apply to facilities and vessels that voluntarily engage in vapor control activities or that do so in compliance with other regulatory requirements imposed by the Federal Government or by the States. Our regulatory authority is delegated to the Coast Guard by the Secretary of Homeland Security, and derives from 42 U.S.C. 7511b(f)(2), 33 U.S.C. 1231, and 46 U.S.C. 3703. Section 7511b(f)(2) of Title 42 U.S.C. was enacted by the Clean Air Act Amendments of 1990 (CAA 90), and directs the Secretary to issue regulations ensuring the safety of equipment and operations used to control vapor emissions. Section 1231 of Title 33 U.S.C. gives the Secretary authority to issue regulations to implement port and waterways safety statutes. One of those statutes is 33 U.S.C. 1225, which requires the Secretary to act as necessary to prevent damage to land and structures on or along U.S. navigable waters and to protect these navigable waters and their resources. Section 3703 of Title 46 U.S.C. requires the Secretary to regulate vessels and their liquid bulk dangerous cargo operations to protect life, property, and the marine environment.

During marine tank vessel loading and other operations, the liquid loaded into a cargo tank displaces vapors within the tank. Vapors are also generated because of vapor growth. The emitted vapors of certain cargoes contain volatile organic compounds (VOCs) and other air pollutants. CAA 90 requires that these vapors be controlled in air quality non-attainment areas. Under CAA 90, the U.S. Environmental Protection Agency (EPA) issues national standards for control of VOCs and other air pollutants emitted during marine tank vessel operations. CAA 90 also authorizes Federal and State regulations to set vapor emission standards and to require that marine terminals and tank vessels be equipped with VCSs. These systems are used to collect and process vocs and other air pollutants emitted during loading and other operations of marine tank vessels.

Two trends have emerged since we implemented our current VCS regulations. Together, these trends make it advisable for us to amend our regulations.

Improved design and technology: First, VCS design and technology has improved since 1990, and our current regulations do not reflect those improvements. Currently, we accommodate these design and technology improvements by using the exemption and equivalency determination provisions of 33 CFR 154.108 and 46 CFR 30.15–1 to approve individual applications by VCS owners or designers who can show that their improvements provide a level of safety at least equivalent to that provided by our regulations. Reliance on individual exemptions or equivalency determinations involves extra risk for VCS owners and designers, and extra review time for the Coast Guard. We would prefer to reduce the need for individual exemptions and equivalency determinations, and therefore reduce Coast Guard administrative work, by updating our regulations to reflect more recent VCS design and technology.

Expanded capabilities and requirements: Second, VCSs may now control more cargoes than they could in 1990, and are subject to additional Federal and State regulatory requirements. In 1990, Federal and State requirements limited VCSs to the control of vapor emissions from crude oil, gasoline blend, or benzene cargoes. The EPA and States now permit or require the control of vapor emissions from many other cargoes. *See* current EPA regulations in 40 CFR subpart Y, 40 CFR 63.560–63.568. In addition, EPA regulations now require marine tank vessels operating at major terminals that control VOC vapors to be vapor-tight and equipped with vapor collection systems. 40 CFR 63.562. Because current Coast Guard regulations have not been significantly amended since 1990, they do not reflect the expanded range of cargoes controlled by VCSs, nor do they reflect EPA's current 40 CFR 63.562 requirements.

Facilities and vessels that control vapors from cargoes other than crude oil, gasoline blend, or benzene, or that are subject to 40 CFR 63.562, may voluntarily comply with guidance that we provided in a policy letter sent to

VCS-certifying entities on May 5, 1992, or in Navigation and Vessel Inspection Circular (NVIC) No. 1–96 (April 1996), which provides safety standards for the design and operation of marine VCSs at tank barge cleaning facilities. This guidance was developed in close consultation with the Chemical Transportation Advisory Committee (CTAC), a Coast Guard advisory committee that operates under the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, but it is not legally binding on these facilities and vessels. These guidance documents are available in the public docket. We wish to update our VCS regulations to incorporate this guidance in our regulatory requirements.

Our proposed changes would bring our regulations into line with the guidance we have developed to deal with post-1990 improvements in VCS design and technology, with the expanded capabilities that VCSs now provide, and with the expansion of the Federal and State regulatory environments in which VCSs function. The proposed changes would also adopt or modify many CTAC recommendations, all of which appear in the docket for this rulemaking.

IV. Discussion of Proposed Rule

The proposed new regulations:

- Reflect the expanded number and scope of Federal and State regulations for VCSs since 1990;
- Reflect advances in VCS technology and operational practices since 1990, particularly in vapor-balancing operations, cargo line clearing operations, and multi-breasted tandem barge-loading operations;
- Incorporate the policy guidance (1992 policy letter and 1996 NVIC; both available in the docket) and reflect regulatory exemptions and equivalency determinations that we have provided or granted since 1990;
- Provide new regulations for cargoes and operations, such as tank barge cleaning, that have become subject to Federal or State regulatory expansion since 1990;
- Provide for periodic operational reviews to ensure that VCSs are properly maintained and operated after they are certified;
- Provide an alternate test program for analyzers and pressure sensors, in addition to existing 24-hour pre-transfer/cleaning instrument testing requirements, to provide greater regulatory flexibility;
- Require certifying entities to be operated by currently licensed professional engineers, to ensure that certification is conducted by properly qualified professionals, and clarify the role of the certifying entity in VCS design, installation, and hazard reviews;
- Remove 33 CFR part 154, appendix B, which provides specifications for flame arresters, and requires flame arresters to meet third-party standards, because of apparent lack of public demand for these devices;
- Attempt to achieve greater clarity through the use of tabular presentation;
- Update industry standards that are incorporated by reference into our regulatory requirements;
- Phase in requirements for existing VCSs in order to moderate the economic impact of new requirements for those VCSs;
- Make conforming changes in regulations other than 33 CFR part 154, subpart E and 46 CFR part 39; and
- Make nonsubstantive changes in the wording or style of existing regulations, either to improve their clarity or to align them with current Federal regulatory style guidance.

Table 1 shows the sections affected by our proposed rule and, with reference to the foregoing discussion, briefly indicates how and why we propose to change, add, or remove regulatory text. The proposed regulatory text itself is, in many places, complex and technical. Therefore, we invite you to use Table 1 as a guide, but we urge you to read and analyze the proposed regulatory text following this preamble with care, to determine exactly how these proposed changes could affect you. We are providing an extended public comment period—6 months instead of the Coast Guard's normal 3-month period—to facilitate your in-depth review.

TABLE 1—PROPOSED CHANGES IN MARINE VCS REGULATIONS

Section	Proposed change and justification	
33 CFR:		
154.106	Update or add standards that are incorporated by reference, to reflect changes proposed elsewhere in Part 154 and, generally, to reflect technology improvements since 1990. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.	
154.310(b)	Amend operations manual requirements relating to VCSs to reflect other proposed changes and to ensure the operations manual provides adequate information.	
154.500	Update or add industry flange and coupling standards that are incorporated by reference, and make nonsubstantive wording or style changes.	
154.735	Update or add incorporated-by-reference industry standards for electrical wiring, electrical equipment, and tank cleaning or gas freeing operations involving oil residue or mixtures, and make nonsubstantive wording or style changes.	
154.740	Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.	
154.800–154.850 (33 CFR Part 154, Subpart E).	Remove these sections and transfer substance to new Subpart P, beginning with 33 CFR 154.2000, to facilitate the substantive changes we propose while preserving related material in a sequential arrangement. Existing sections and their proposed new locations are listed here:	
	Existing §	Proposed §
	154.800	154.2000
	154.802	154.2001
	154.804	154.2020–154.2023
	154.806	154.2010, 154.2011

TABLE 1—PROPOSED CHANGES IN MARINE VCS REGULATIONS—Continued

Section	Proposed change and justification
	154.808 ..... 154.2100 154.810 ..... 154.2101 154.812 ..... 154.2102 154.814 ..... 154.2103 154.820, 154.822 ..... 154.2105, 154.2106 154.824 ..... 154.2107 154.826 ..... 154.2108 154.828 ..... 154.2109 154.840 ..... 154.2030 154.850 ..... 154.2150
154.2000 (present 154.800)	Extend the applicability of this part to cover the range of cargoes that can be controlled by a VCS, and the range of facilities and operations using VCSs. Both have expanded since 1990. Grandfather existing facilities and provide for 3-year phase-in to moderate the economic impact of new requirements. Add language explaining the difference between regulatory measurements and parenthetical measurements that are included only for convenience, to eliminate possible confusion as to which measurement is the focus of the regulation. Clarify, without substantive change, that Coast Guard regulations do not require any vessel or facility to control vapor, but that the regulations apply to vessels or facilities that choose to or that, due to other laws, must control vapor. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.
154.2001 (present 154.802)	Add definitions to reflect substantive changes proposed elsewhere in the NPRM. Make nonsubstantive wording or style changes.
154.2010, 154.2011 (present 154.806)	Reorganize provisions discussing qualifications and acceptance of certifying entities, for improved clarity. Codify current USCG guidance for those applying for acceptance as certifying entities, to eliminate possible confusion. Require certifying entities to use licensed professional engineers for VCS certification, to ensure that certification is conducted by persons with appropriate professional qualifications, as recommended by CTAC. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.
154.2020–154.2023 (present 154.804)	Reorganize provisions discussing VCS certification and recertification for improved clarity, and add new requirements for operational reviews, to help reduce post-certification maintenance and operational problems. Clarify, without substantive change, that recertification is needed before an approved VCS can operate beyond the terms of its existing certification. Codify current USCG guidance for certifying entities conducting certification or recertification reviews, to standardize certification or recertification requirements and processes. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.
154.2030 (present 154.840)	Add new training requirements to reflect other proposed changes. Add new training requirements for persons overseeing VCS maintenance, to help ensure a good-quality maintenance program between recertifications. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.
154.2031	Add new section to address training requirements for tank barge cleaning facility personnel, because Federal and State regulations have expanded to include these facilities since 1990.
154.2100 (present 154.808)	Revise temperature limits to reflect additional cargoes. Modify or clarify (without substantive change) VCS piping, working pressure, remote indicator, alarm and shutdown activation, condensate control, VCS components/vapor suitability, and vapor processing unit provisions in line with current USCG guidance; thereby eliminating the current need, explained in Part III of this preamble, for equivalency or exemption determinations based on that guidance. Make nonsubstantive wording or style changes, and update or add standards that are incorporated by reference.
154.2101 (present 154.810)	Remove requirement for manual isolation valve between facility vapor connection and remotely operated cargo vapor shutoff valve to eliminate potential for overpressure if isolation valve is accidentally left closed, to reflect post-1990 equipment and operational practice improvements. Modify or clarify (without substantive change) remotely operated cargo vapor shutoff valve, vapor line marking, vapor hose, and electrical insulation provisions in line with current USCG guidance; thereby eliminating the current need, explained in Part III of this preamble, for equivalency or exemption determinations based on that guidance.

TABLE 1—PROPOSED CHANGES IN MARINE VCS REGULATIONS—Continued

Section	Proposed change and justification
	Make nonsubstantive wording or style changes, update or add standards that are incorporated by reference, and conform cross references to reflect proposed redesignations.
154.2102 (present 154.812)	Exclude facilities that collect vapors emitted during inerting of vessel cargo tanks because during cargo tank inerting, an inert gas instead of a liquid is added into the cargo tank and therefore there is no liquid overfill hazard, in line with current USCG guidance; thereby eliminating the current need, explained in Part III of this preamble, for equivalency or exemption determinations based on that guidance. Eliminate requirement for separate overfill control panels, to reflect post-1990 equipment and operational practice improvements; the change would allow the overfill control system to be incorporated into other control panels to save cost. Clarify, without substantive change, what type of facilities need to have explosion-proof overfill receptacles. Align labeling requirements with current equipment vendor practice, which is suitable for these requirements. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.
154.2103 (present 154.814)	Revise to reflect additional cargoes that have been added since 1990. Require low-pressure sensors only if vapor-moving device is used to draw vapor; the change would allow cost savings because a vapor-moving device is the source of vacuum in a VCS. Require pressure sensors in facilities that collect vapors while inerting vessel cargo tanks, to prevent overpressurization hazard caused by inert gas added into the cargo tanks. Modify or clarify (without substantive change) cargo vapor shutoff valve closing, shutdown setpoint, pressure sensor location, and pressure relief valve provisions in line with current USCG guidance; thereby eliminating the current need, explained in Part III of this preamble, for equivalency or exemption determinations based on that guidance. Limit requirements for flame arresters or flame screens to the flammable, combustible, or non-high flash point liquid cargoes for which flame is a serious threat. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.
154.2104	Add new section to provide for cargo line clearance systems, to reflect post-1990 equipment and operational practice improvements, in line with current USCG guidance; thereby eliminating the current need, explained in Part III of this preamble, for equivalency or exemption determinations based on that guidance.
154.2105, 154.2106 (present 154.820, 154.822).	Reorganize provisions for improved clarity.
	Revise to reflect additional cargoes that have been added since 1990. Limit applicability to the flammable, combustible, or non-high flash point liquid cargoes for which fire, explosion, or detonation are serious threats. Remove flame arrester provisions (and Appendix B) due to apparent lack of public demand for these devices. To maintain the equivalent level of safety, flame arresters are required to meet industry standards and the VCS is required to have additional safety monitoring instruments which will activate emergency VCS shutdown. Modify or clarify VCS controlling inerted cargo vapors, oxygen analyzer, dock detonation arrester location, discharge vent, and detonation arrester installation provisions in line with current USCG guidance; thereby eliminating the current need, explained in Part III of this preamble, for equivalency or exemption determinations based on that guidance. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.
154.2107 (present 154.824)	Revise to reflect additional cargoes (added since 1990) that share the flammable, combustible, or non-high flash point characteristics of cargoes covered by the existing regulation. Modify, add, or clarify (without substantive change) vapor line purging, gas injection location, analyzer controlling scheme, analyzer response time, analyzer alarm and shutdown setpoint, inert gas producing combustion device separation, and base loading method provisions in line with current USCG guidance; thereby eliminating the current need, explained in Part III of this preamble, for equivalency or exemption determinations based on that guidance. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.
154.2108 (present 154.826)	Revise to reflect additional cargoes added since 1990; limit paragraphs (b) and (e) to flammable, combustible, or non-high flash point cargoes that are subject to fire, detonation, or explosion. Remove references to flame arresters, explosion suppressors, and other systems for which there is an apparent lack of public demand or which USCG generally has not accepted. Allow only Coast Guard-accepted detonation arresters, to improve safety.

TABLE 1—PROPOSED CHANGES IN MARINE VCS REGULATIONS—Continued

Section	Proposed change and justification
	Modify or clarify (without substantive change) detonation arrester, alarm, and construction provisions in line with current USCG guidance; thereby eliminating the current need, explained in Part III of this preamble, for equivalency or exemption determinations based on that guidance. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.
154.2109 (present 154.828)	Revise to reflect additional cargoes added since 1990; limit paragraphs (a), (b), and (e) to flammable, combustible, or non-high flash point cargoes that are subject to fire, detonation, or explosion. Remove references to flame arresters, explosion suppressors, and other systems USCG generally has not accepted. Allow only Coast Guard-accepted detonation arresters, to improve safety. Modify, add, or clarify (without substantive change) quick-closing stop valve, anti-flashback burner, liquid seal, and vapor-moving device shutdown provisions in line with current USCG guidance; thereby eliminating the current need, explained in Part III of this preamble, for equivalency or exemption determinations based on that guidance. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.
154.2110	Add new section to provide for facilities that control vapors to or from vessel cargo tanks through vapor balancing, to reflect post-1990 equipment and operational practice improvements. Limit the applicability of paragraphs (a)(2), (a)(4), (b), and (c) to flammable, combustible, or non-high flash point cargoes that are subject to fire, detonation, or explosion, as those paragraphs require measures that are only intended to address the risks posed by such cargoes.
154.2111	Add new section to provide for connection of a marine VCS to a facility's main VCS, to reflect technology advances since 1990.
154.2112	Add new section to provide for additional cargoes that have potential to polymerize or freeze, which have become subject to Federal or State regulatory coverage since 1990.
154.2113	Add new section to provide for additional cargoes that are alkylene oxides, which have become subject to Federal or State regulatory coverage since 1990.
154.2150 (present 154.850)	Revise to reflect substantive changes proposed elsewhere in the NPRM. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.
154.2180, 154.2181	Provide additional regulatory flexibility by adding new sections to provide testing program for analyzers and pressure sensors as an alternative to compliance with 154.2150 and 154.2250.
154.2200–154.2250	Add new sections to provide for tank barge cleaning facilities, which have become subject to Federal or State regulatory coverage since 1990, in line with NVIC No. 1–96 as modified by CTAC recommendations.
154, Appendix B	Remove appendix dealing with tank vent flame arresters due to apparent lack of public demand for these devices; *see* entry above for 154.2105, 154.2106.
155.750	Update cross references.
156.120	Revise to reflect substantive changes proposed elsewhere in the NPRM.
156.170	Update cross references. Allow alternative methods of compliance with testing and inspection requirements, in line with public comment received on periodic renewal of OMB approval for collection of information; *see* Docket USCG–2005–22983 in Regulations.gov.
46 CFR: 35.35–5	Prohibit use of ship-to-shore bonding cables, to align with International Maritime Organization and International Safety Guide for Oil Tankers and Terminals policy, and make nonsubstantive wording or style changes.
35.35–20, 35.35–30	Revise to reflect substantive changes proposed elsewhere in the NPRM.
Part 39	Revise and transfer substance from existing sections to proposed new locations as listed here, to facilitate the substantive changes we propose while preserving related material in a sequential arrangement.

TABLE 1—PROPOSED CHANGES IN MARINE VCS REGULATIONS—Continued

Section	Proposed change and justification	
	Existing §	Proposed §
	39.10–1	39.1001
	39.10–3	39.1003
	39.10–5	39.1005
	39.10–9	39.1009
	39.10–11	39.1011
	39.10–13	39.1013, 39.1015
	39.20–1	39.2001
	39.20–3	39.2003
	39.20–7	39.2007
	39.20–9	39.2009
	39.20–11	39.2011
	39.20–13	39.2013
	39.30–1	39.3001
	39.40–1	39.4001
	39.40–3	39.4003
	39.40–5	39.4005
39.1001 (present 39.10–1)	Revise applicability to reflect additional cargoes and VCS operations that have become subject to Federal or State regulatory coverage since 1990. Grandfather existing tank barges and provide for 5-year phase-in to moderate the economic impact of new requirements, and codify current USCG guidance. Add language explaining the difference between regulatory measurements and parenthetical measurements that are included only for convenience, to eliminate possible confusion as to which measurement is the focus of the regulation. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.	
39.1003 (present 39.10–3)	Add definitions to reflect substantive changes proposed elsewhere in the NPRM. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.	
39.1005 (present 39.10–5)	Update, without substantive change, the general incorporation-by-reference section in line with current Office of the federal register requirements for the language of such sections. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.	
39.1009 (present 39.10–9)	Clarify, without substantive change, that vapor processing units can be either permanent or portable. Clarify, without substantive change, that vapor processing unit piping and components need to meet 46 CFR chapter I, subchapter F and electrical equipment need to meet 46 CFR chapter I, subchapter J. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.	
39.1011 (present 39.10–11)	Add new pre-cleaning procedures, which have become subject to Federal or State regulatory coverage since 1990, to personnel training requirements.	
39.1013, 39.1015 (present 39.10–13)	Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations. Clarify, without substantive change, by placing alternative for foreign-flagged vessels in a separate section (39.1015). For the regulated public's benefit, provide additional information about the process for Marine Safety Center review and approval of proposed modification of existing USCG-approved vapor collection system. Clarify, without substantive change, that vapor processing unit is reviewed with tank vessel as a system. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.	
39.1017	Add new section for tank barge multi-breasted loading, to reflect post-1990 operational practice improvements, and cargo tank gas-freeing or cleaning operations, which have become subject to Federal or State regulatory coverage since 1990.	
39.2001 (present 39.20–1)	Allow flexible hoses and quick disconnect couplings, to reflect technology advances since 1990. Require overfill alarm and shutdown systems as primary overfill protection for toxic cargoes, to reflect technology advances since 1990. Make nonsubstantive wording or style changes, conform cross references to reflect proposed redesignations, and update or add standards that are incorporated by reference.	

TABLE 1—PROPOSED CHANGES IN MARINE VCS REGULATIONS—Continued

Section	Proposed change and justification
39.2003 (present 39.20–3)	Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.
39.2007 (present 39.20–7)	Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.
39.2009 (present 39.20–9)	Clarify, without substantive change, tank overfill sensor switch requirements. Add provisions for tank barges with toxic cargoes that have become subject to Federal or State regulatory coverage since 1990. Make nonsubstantive wording or style changes, conform cross references to reflect proposed redesignations, and update or add standards that are incorporated by reference.
39.2011 (present 39.20–11)	Revise cargo tank venting system capacity requirement to reflect additional cargoes that have become subject to Federal or State regulatory coverage since 1990, in line with current USCG guidance. Clarify, without substantive change, the range of vacuum pressure at which cargo tank venting system cannot relieve. Allow liquid-filled pressure-vacuum breakers, to reflect new technology since 1990. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.
39.2013 (present 39.20–13)	Clarify, without substantive change, the location requirement for pressure sensors. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.
39.2014	Add new section for polymerizing cargoes that have become subject to Federal or State regulatory coverage since 1990.
39.2015	Add new section for tank barge pressure sensors, to improve safety and to reflect new technology since 1990.
39.3001 (present 39.30–1)	Replace obsolete “letter of adequacy” requirement with certification and operations manual endorsement requirements. Clarify, without substantive change, the venting capacities of pressure-vacuum relief valves used in determining cargo loading rates. Clarify, without substantive change, the metallic sampling equipment bonded requirement for static accumulating cargoes. Revise oxygen concentration requirements to reflect additional cargoes that have become subject to Federal or State regulatory coverage since 1990. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations. Update or add, generally to reflect technology advances since 1990, industry standards that are incorporated by reference.
39.4001 (present 39.40–1)	Revise to reflect additional operations and cargoes that have become subject to Federal or State regulatory coverage since 1990. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.
39.4003 (present 39.40–3)	Revise to reflect additional operations and cargoes that have become subject to Federal or State regulatory coverage since 1990. Clarify, without substantive change, that the detonation arrester requirement applies only to non-inerted flammable or combustible cargoes that are subject to serious flame or combustion risks. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.
39.4005 (present 39.40–5)	Revise to reflect additional operations and cargoes that have become subject to Federal or State regulatory coverage since 1990. Make nonsubstantive wording or style changes and conform cross references to reflect proposed redesignations.
39.5001–39.5005	Add new sections on tank barge multi-breasted loading, to reflect post-1990 operational practice improvements in line with current USCG policy; thereby eliminating the current need, explained in Part III of this preamble, for equivalency or exemption determinations based on design information and calculations.
39.6001–39.6009	Add new sections on tank barge cleaning operations, which have become subject to Federal or State regulatory coverage since 1990, in line with existing USCG guidance provided by NVIC No. 1–96, as modified by CTAC recommendations.

V. Incorporation by Reference

Material proposed for incorporation by reference appears in 33 CFR 154.106 and 46 CFR 39.1005. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in 33 CFR 154.106 and 46 CFR 39.1005.

Before publishing a binding rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

VI. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

A. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. OMB has not reviewed it under that Order.

A combined preliminary Regulatory Analysis and an Initial Regulatory Flexibility Analysis is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. A summary of the analysis follows:

The proposed rule would revise the existing regulations (33 CFR Parts 154 and 156, 46 CFR Parts 35 and 39) regarding the safety of facility and vessel VCSs. This rulemaking would amend the regulations to make VCS requirements more compatible with other Federal and State environmental requirements, regulate industry advancements in VCS technology, and codify the standards for VCSs at tank barge cleaning facilities. The proposed rule would increase the safety of operations by regulating the design, installation, and use of VCSs, but would not require anyone to install or use VCSs.

The proposed rule would provide additional requirements for VCS equipment, compliance documentation, training, and operations. In general, this rulemaking would:

- Add new requirements for certifications, recertifications, periodic operational reviews, and approval processes for certain operations concerning VCSs to improve safety. These various requirements mainly affect facilities with VCSs, including tank barge cleaning facilities.
- Require new training or amend training requirements to improve safety. These proposed training requirements affect facilities with VCSs (including tank barge cleaning facilities) and tank barge owners and operators.
- Permit cargo line clearing; however, there would be some requirements to receive Coast Guard permission to do so.
- Provide foreign-flagged tank barges some flexibility for certification procedures.
- Add new requirements for certain equipment on U.S.-flagged tank barges and at tank barge cleaning facilities and other facilities with VCSs to improve safety and environmental protection.
- Removes certain requirements in order to offer cost savings. This change mainly impacts facilities with VCSs.

The proposed rule is necessary to reflect the expansion of Federal and State regulations for VCSs since the current regulations were adopted in 1990, and to reflect technological advances over that period. Without revisions to the regulation by the Coast Guard, market failures would persist in creating situations of uncompensated risk. In the case of this proposed rule, the uncompensated risks accrue to the public, maritime commerce, and mariners in the form of safety hazards.

Affected Population

Based on Coast Guard data, we estimate this proposed rule would affect 234 facilities with VCSs, 25 certifying entities, 15 tank barge cleaning facilities, 216 U.S.-flagged tank barge owners, and owners of 338 foreign-flagged tank barges.

Costs

Over a 10-year period of analysis, we estimate the total present value cost of the rulemaking to be approximately $8.8 million at a 7 percent discount rate and approximately $10.3 million at a 3 percent discount rate. Over the same 10-year period of analysis, we estimate the annualized cost of this proposed rule to be $1.3 million at 7 percent and $1.2 million at 3 percent.

Benefits

The proposed rule would amend existing regulations regarding VCSs in marine activities. The Coast Guard is pursuing this amendment to existing standards to reflect technological improvements and to expand environmental protection. The proposed rule would promote maritime safety and environmental stewardship. It offers provisions for more practicable and efficient management of hazardous materials. The proposed rule contains some provisions which would offer facilities the opportunity to reduce maintenance costs.

See the preliminary Regulatory Analysis available in the docket for a detailed analysis of the costs and benefits of this rulemaking.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this rule on small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000.

A combined preliminary Regulatory Analysis and Initial Regulatory Flexibility Analysis discussing the impact of this proposed rule on small entities is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble.

Based on our analysis, we estimate that small entities affected by this rulemaking are primarily small businesses consisting of certifying entities, owners and operators of tank barge cleaning facilities, tank barges, and facilities with VCSs. We did not find data to suggest small not-for-profit organizations or small government entities would be directly affected by this rulemaking. In addition, certifying entities would incur no additional costs due to the proposed rule and are not analyzed further. We evaluated the impact on small entities for each segment of industry that incur additional costs, since this rulemaking would require different provisions for owners and operators of tank barge cleaning facilities, tank barges, and facilities with VCSs.

Based on our assessment, 54 percent of tank barge owners affected by this rulemaking would be considered small by Small Business Administration (SBA) size standards. We estimate 97 percent of these small entities would incur cost impacts that are 1 percent or less than their annual revenues during the highest cost year (implementation year). The remainder would incur annual cost impacts between 1 and 3 percent of their annual revenues.

We estimate 8 percent of facilities with VCSs would be small by SBA size standards. We estimate that almost 93 percent of these small entities would incur annual cost impacts that are 1 percent or less than their annual revenues during the highest cost year (implementation year) as well as

annually. Another 7 percent would have cost impacts between 1 to 3 percent of their revenue.

We estimate all of the tank barge cleaning facilities are considered small by SBA size standards. We estimate 64 percent of these tank barge cleaning facilities would incur cost impacts that are potentially greater than 3 percent of their annual revenues during the highest cost year (implementation year). However, the proposed rule would codify existing voluntary standards for tank barge cleaning facilities. We anticipate the cost impacts to tank barge cleaning facilities may be overestimates.

We are interested in the potential impacts from this proposed rule on small businesses and we request public comment on these potential impacts. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rulemaking would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why, how, and to what degree you think this rule would have an economic impact on you.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Ms. Sara Ju at the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This proposed rule would require an amendment to an existing collection of information (1625–0060) as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Vapor Control Systems for Facilities and Tank Vessels.

OMB Control Number: 1625–0060.

Summary of the Collection of Information: This collection of information ensures industry compliance with safety standards for VCSs. The proposed rule would require recordkeeping and reporting on the design and use of VCSs. The proposed rule contains collection of information requirements which include: Certifications, recertifications, approval requests, review of operating manuals, failure analyses, operational review letters, and relabeling. The collection of information would aid the Coast Guard and industry in assuring safe practices associated with VCSs.

Need for Information: The Coast Guard needs this information to ensure industry use of VCS requirements are compatible with new Federal and State environmental requirements, to regulate industry advancements in VCS technology, and to ensure the safe design and operation of a VCS at a tank barge cleaning facility.

Proposed Use of Information: The Coast Guard would use this information to determine whether an entity meets the statutory requirements.

Description of the Respondents: The respondents are owners/operators of tank barge cleaning facilities, facilities and tank vessels. Reporting and recordkeeping requirements will be completed by facility and vessel owners/operators, persons in charge, engineers, maintenance workers, and operations managers of affected tank barges, tank barge cleaning facilities, facilities, and certifying entities.

Number of Respondents: The burden change of this collection of information includes certifications, re-certifications, approval requests, reviewing operating manuals, preparing operational review letters, and relabeling. This collection of information applies to various owners and operators of tank barges, facilities, tank barge cleaning facilities, and certifying entities. We estimate the total number of respondents is 490.

Frequency of Responses: This proposed rule will vary the number of responses each year by requirement. Some actions are one time only and others are required more frequently.

Burden of Response: This collection of information applies to certifying entities, tank barge owners/operators and owners/operators of facilities with VCS. The Coast Guard estimates the total number of respondents is 490. The burden of response varies by collection of information requirement.

Estimate of Total Annual Burden: The total annual burden is estimated to increase by 7,197 hours (as a result of the proposed rule.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we will submit a copy of this proposed rule to OMB for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and, how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this proposed rule, OMB would need to approve the

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This proposed rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule uses voluntary consensus standards from the following organizations: American Petroleum Institute (API), American National Standards Institute (ANSI), American Society for Testing and Materials (ASTM), International Electrotechnical Commission (IEC), International Maritime Organization (IMO), National Electrical Manufacturers Association (NEMA), National Fire Protection Association (NFPA), Oil Companies International Marine Forum (OCIMF), and Underwriters Laboratories, Inc. (UL). The proposed sections that reference these standards and the locations of these standards are listed in 33 CFR 154.106 and 46 CFR 39.1005.

If you disagree with our analysis of the voluntary consensus standards listed above or are aware of voluntary consensus standards that might apply but are not listed, please send a comment to the docket using one of the methods under **ADDRESSES.** In your comment, please explain why you disagree with our analysis and/or identify voluntary consensus standards we have not listed that might apply.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. This rule involves regulations concerning vessel operation safety standards and regulations concerning manning, documentation, admeasurement, inspection, and equipping of vessels. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 154

Alaska, Fire prevention, Hazardous substances, Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 155

Alaska, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 156

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 39

Cargo vessels, Fire prevention, Hazardous materials transportation, Incorporation by reference, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR chapter I, and 46 CFR chapter I as follows:

33 CFR—Navigation and Navigable Waters

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

1. The authority citation for part 154 is revised to read as follows:

Authority: 33 U.S.C. 1225, 1231, 1321(j)(1)(C), (j)(5), (j)(6), and (m)(2); sec. 2, E.O. 12777, 56 FR 54757; Department of Homeland Security Delegation No. 0170.1. Subpart F is also issued under 33 U.S.C. 2735. Vapor control recovery provisions of Subpart P are also issued under 42 U.S.C. 7511b(f)(2).

2. Revise § 154.106 to read as follows:

§ 154.106 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1

CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, it is available for inspection at the Coast Guard, Office of Operating and Environmental Standards (CG–522), 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources indicated in this section.

(b) American Petroleum Institute (API), 1220 L Street, NW., Washington, DC 20005.

(1) API Standard 2000, Venting Atmospheric and Low-Pressure Storage Tanks (Non-refrigerated and Refrigerated), Third Edition, January 1982 (reaffirmed December 1987) ("API 2000"), incorporation by reference (IBR) approved for 33 CFR 154.2103 and 154.2203.

(2) API Recommended Practice 550, Manual on Installation of Refinery Instruments and Control Systems, Part II—Process Stream Analyzers, Section 1—Oxygen Analyzers, Fourth Edition, February 1985 ("API 550"), IBR approved for 33 CFR 154.2107.

(c) American National Standards Institute (ANSI), 25 West 43rd Street, 4th floor, New York, NY 10036.

(1) ANSI B16.5, Steel Pipe Flanges and Flanged Fittings, 1988, IBR approved for 33 CFR 154.500, 154.2100, 154.2101, 154.2202, and 33 CFR part 154, Appendix A.

(2) ANSI B16.24, Bronze Pipe Flanges and Flange Fittings Class 150 and 300, 1979, IBR approved for 33 CFR 154.500 and 154.2100.

(3) ANSI B16.34, Valves—Flanged, Threaded, and Welding End, 2004, IBR approved for 33 CFR 154.2100.

(4) ANSI B31.3, Chemical Plant and Petroleum Refinery Piping, 1987 (including B31.3a–1988, B31.3b–1988, and B31.3c–1989 addenda), IBR approved for 33 CFR 154.510 and 154.2100.

(d) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

(1) ASTM F 631–93, Standard Guide for Collecting Skimmer Performance Data in Controlled Environments ("ASTM F 631"), IBR approved for 33 CFR part 154, Appendix C.

(2) ASTM F 715–95, Standard Test Methods for Coated Fabrics Used for Oil Spill Control and Storage ("ASTM F 715"), IBR approved for 33 CFR part 154, Appendix C.

(3) ASTM F 722–82 (1993), Standard Specification for Welded Joints for Shipboard Piping Systems ("ASTM F 722"), IBR approved for 33 CFR part 154, Appendix A.

(4) ASTM F 1122–87 (1992), Standard Specification for Quick Disconnect Couplings ("ASTM F 1122"), IBR approved for 33 CFR 154.500.

(5) ASTM F 1155–98, Standard Practice for Selection and Application of Piping System Materials ("ASTM F 1155"), IBR approved for 33 CFR part 154, Appendix A.

(6) ASTM F 1273–91 (Reapproved 1996) Standard Specification for Tank Vent Flame Arresters ("ASTM F 1273"), IBR approved for 33 CFR 154.2001.

(e) International Electrotechnical Commission (IEC), Bureau Central de la Commission Electrotechnique Internationale, 3, rue de Varembé, P.O. Box 131, CH—1211 Geneva 20, Switzerland.

(1) IEC 60309–1 Plugs, Socket-Outlets and Couplers for Industrial Purposes—Part 1: General Requirements, Edition 4.1 2005–12, IBR approved for 33 CFR 154.2102.

(2) IEC 60309–2 Plugs, Socket-Outlets and Couplers for Industrial Purposes—Part 2: Dimensional Interchangeability Requirements for Pin and Contact-tube Accessories, Edition 4.1 2005–12, IBR approved for 33 CFR 154.2102.

(f) National Electrical Manufacturers Association (NEMA), 1300 North 17th Street, Suite 1752, Rosslyn, VA 22209.

(1) ANSI NEMA WD–6—Wiring Devices, Dimensional Requirements, 1988 ("NEMA WD–6"), IBR approved for 33 CFR 154.2102.

(2) [Reserved]

(g) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169–7471.

(1) NFPA 51B, Standard for Fire Prevention in Use of Cutting and Welding Processes, 1994, IBR approved for 33 CFR 154.735.

(2) NFPA 70, National Electrical Code, 1987, IBR approved for 33 CFR 154.735.

(3) NFPA 70, National Electrical Code, 2002, IBR approved for 33 CFR 154.2100 and 154.2102.

(h) Oil Companies International Marine Forum (OCIMF), 29 Queen Anne's Gate, London, SW1H 9BU, England.

(1) International Safety Guide for Oil Tankers and Terminals, Fifth Ed., 2006 ("ISGOTT"), IBR approved for 33 CFR 154.735, 154.2101, and 154.2203.

(2) [Reserved]

(i) Underwriters Laboratories, Inc. (UL), 333 Pfingsten Road, Northbrook, IL 60062.

(1) UL 525 Standard for Flame Arresters, 8th Edition, May 9, 2008, IBR approved for 33 CFR 154.2001.

(2) [Reserved]

3. In § 154.310, revise paragraph (b) to read as follows:

§ 154.310 Operations manual: Contents.

* * * * *

(b)(1) The operations manual must contain a description of the facility's vapor control system (VCS), if the facility—

(i) Collects vapor emitted from vessel cargo tanks for recovery, destruction, or dispersion; or

(ii) Balances vapor to or from vessel cargo tanks.

(2) The VCS description required by paragraph (b)(1) of this section must include a line diagram or simplified piping and instrumentation diagram (P&ID) of the facility's VCS piping, including the location of each valve, control device, pressure-vacuum relief valve, pressure indicator, flame arrester, and detonation arrester;

(3) The VCS description required by paragraph (b)(1) of this section must describe the design and operation of its—

(i) Vapor line connection;

(ii) Startup and shutdown procedures;

(iii) Steady-state operating procedures;

(iv) Provisions for dealing with pyrophoric sulfide (for facilities which handle inerted vapors of cargoes containing sulfur);

(v) Alarms and shutdown devices; and

(vi) Pre-transfer equipment inspection requirements.

(4) The VCS description required by paragraph (b)(1) of this section must include all test procedures and a checklist for use during the testing of the VCS required by 33 CFR 156.170(g). The test procedures must specify—

(i) All tests required for initial certification under 33 CFR 154.2022(d);

(ii) All components that are to be tested; and

(iii) Procedures for testing each component.

(5) The VCS description required by paragraph (b)(1) of this section must include—

(i) A list of all cargoes the VCS is approved to control; and

(ii) Copies of any Coast Guard letters exempting the VCS from regulatory requirements.

(6) The VCS description required by paragraph (b)(1) of this section must include detailed operating instructions

for a cargo line clearance system as described in 33 CFR 154.2104, if such a system is used by a facility;

(7) The VCS description required by paragraph (b)(1) of this section must include the following for a tank barge cleaning facility:

(i) A physical description of the facility and facility plan showing mooring areas, locations where cleaning operations are conducted, control stations, and locations of safety equipment;

(ii) The sizes, types, and number of tank barges from which the facility can conduct cleaning operations simultaneously; and

(iii) The minimum number of persons required to be on duty during cleaning operations and the duties of each.

* * * * *

4. Revise § 154.500 to read as follows:

§ 154.500 Hose assemblies.

Each hose assembly used for transferring oil or hazardous material must meet the following requirements:

(a) The minimum design burst pressure for each hose assembly must be at least four times the sum of the pressure of the relief valve setting (or four times the maximum pump pressure when no relief valve is installed) plus the static head pressure of the transfer system, at the point where the hose is installed.

(b) The maximum allowable working pressure (MAWP) for each hose assembly must be more than the sum of the pressure of the relief valve setting (or the maximum pump pressure when no relief valve is installed) plus the static head pressure of the transfer system, at the point where the hose is installed.

(c) Each nonmetallic hose must be usable for oil or hazardous material service.

(d) Each hose assembly must either have—

(1) Full threaded connections;

(2) Flanges that meet ANSI B16.5 or ANSI B.16.24 (both incorporated by reference, *see* 33 CFR 154.106); or

(3) Quick-disconnect couplings that meet ASTM F 1122 (incorporated by reference, *see* 33 CFR 154.106).

(e) Each hose must be marked with one of the following:

(1) The name of each product for which the hose may be used; or

(2) For oil products, the words "OIL SERVICE"; or

(3) For hazardous materials, the words "HAZMAT SERVICE—SEE LIST" followed immediately by a letter, number or other symbol that corresponds to a list or chart contained in the facility's operations manual or the vessel's transfer procedure documents which identifies the products that may be transferred through a hose bearing that symbol.

(f) Each hose also must be marked with the following, except that the information required by paragraphs (f)(2) and (3) of this section need not be marked on the hose if it is recorded in the hose records of the vessel or facility, and the hose is marked to identify it with that information:

(1) Maximum allowable working pressure;

(2) Date of manufacture; and

(3) Date of the latest test required by 33 CFR 156.170.

(g) The hose burst pressure and the pressure used for the test required by 33 CFR 156.170 must not be marked on the hose and must be recorded elsewhere at the facility as described in paragraph (f) of this section.

(h) Each hose used to transfer fuel to a vessel that has a fill pipe for which containment cannot practically be provided must be equipped with an automatic back pressure shutoff nozzle.

5. In § 154.735—

a. In paragraph (q), remove the term "NFPA 70" and add, in its place, the words "NFPA 70 (incorporated by reference, *see* 33 CFR 154.106)"; and

b. Revise paragraph (s) to read as follows:

§ 154.735 Safety requirements.

* * * * *

(s) Tank-cleaning or gas-freeing operations conducted by the facility on vessels carrying oil residues or mixtures must be conducted in accordance with sections 11.3 and 11.4 of OCIMF ISGOTT (incorporated by reference, *see* 33 CFR 154.106), except that—

(1) Prohibitions in ISGOTT against the use of recirculated wash water do not apply if the wash water is first processed to remove product residues;

(2) The provisions in ISGOTT section 11.3.6.10 that removal of sludge, scale, and sediment do not apply if personnel use breathing apparatuses which protect them from the tank atmosphere; and

(3) Upon the request of the facility owner or operator in accordance with 33 CFR 154.107, the COTP may approve the use of alternate standards to ISGOTT if the COTP determines that the alternative standards provide an equal level of protection to the ISGOTT standards.

* * * * *

§ 154.740 [Amended]

6. In § 154.740—

a. In paragraph (g), remove the reference "subpart E" and add, in their place, the reference "subpart P"; and

b. In paragraph (i), remove the reference "§ 154.804 of this part" and add, in their place, the reference "33 CFR 154.2023".

7. Remove subpart E (consisting of §§ 154.800 through 154.850) in its entirety.

8. Reserve subparts J through O.

9. Add new subpart P to read as follows:

Subpart P—Marine Vapor Control Systems

General

Sec.

154.2000 Applicability.

154.2001 Definitions.

Certifying Entities

154.2010 Qualifications for acceptance as a certifying entity.

154.2011 Application for acceptance as a certifying entity.

Certification, Recertification, and Operational Review

154.2020 Certification and recertification—Owner/operator responsibilities.

154.2021 Operational review—Owner/operator responsibilities.

154.2022 Certification, recertification, or operational review—Certifying entity responsibilities, generally.

154.2023 Certification, recertification, or operational review—Certifying entity documentation.

Personnel

154.2030 Transfer facilities.

154.2031 Tank barge cleaning facilities.

Transfer Facilities—VCS Design and Installation

154.2100 Vapor control system, general.

154.2101 Requirements for facility vapor connections.

154.2102 Facility requirements for vessel liquid overfill protection.

154.2103 Facility requirements for vessel vapor overpressure and vacuum protection.

154.2104 Cargo line clearance system.

154.2105 Fire, explosion, and detonation protection.

154.2106 Detonation arresters installation.

154.2107 Inerting, enriching, and diluting systems.

154.2108 Vapor-moving devices.

154.2109 Vapor recovery and vapor destruction units.

154.2110 Vapor balancing requirements.

154.2111 Vapor control system connected to a facility's main vapor control system.

154.2112 Vapors with potential to polymerize or freeze—Special requirements.

154.2113 Alkylene oxides—Special requirements.

Transfer Facilities—Operations

154.2150 General requirements.

Alternative Analyzer and Pressure Sensor Reliability Testing

154.2180 Alternative testing program—Generally.

General

§ 154.2000 Applicability.

(a) Except as specified by paragraphs (b) through (g) of this section, this subpart applies to—

(1) Each facility that controls vapors emitted to or from vessel cargo tanks;

(2) A vessel, other than a tank vessel, that has a vapor processing unit located onboard for recovery, destruction, or dispersion of vapors from a tank vessel's cargo tanks;

(3) Certifying entities that review, inspect, test, and certificate facility vapor control systems (VCSs); or

(4) A facility VCS that receives cargo vapor from a vessel when the VCS is connected to a facility's main VCS that serves plant processing areas, such as tank storage areas or tank truck or railcar loading areas, unrelated to tank vessel operations. The requirements of this subpart apply between the vessel vapor connection and the point where the VCS connects to the facility's main VCS.

(b) Each facility that has an existing certified VCS that meets the requirements of this subpart and that has been operating since July 23, 1990, must comply with this amended subpart by [DATE THREE YEARS AFTER EFFECTIVE DATE OF FINAL RULE].

(c) A facility with a Coast Guard-approved VCS operating prior to July 23, 1990, must comply with 33 CFR 154.2150 but otherwise need not comply with this subpart so long as it does not have any design or configuration alterations after its approval and receives cargo vapor only from the specific vessels for which it was originally approved.

(d) A facility that uses a vapor balancing system to transfer vapor from a railcar or a tank truck to a vessel cargo tank while offloading the vessel must have approval from the Commandant.

(e) A facility that transfers vapor from a facility tank to a cargo tank of a vessel which is not offloading cargo must have approval from the Commandant.

(f) A tank vessel that has a permanent or portable vapor processing unit located onboard must meet the requirements of this subpart to the satisfaction of the Commandant, in addition to complying with the requirements of 46 CFR part 39.

(g) This subpart does not apply to the collection of vapors of liquefied flammable gases as defined in 46 CFR 30.10–39.

(h) This subpart does not require a facility or a vessel to control vapor, or a vessel to take away vapor from facilities; however, if a facility operates a VCS to control vapor to or from vessels, the facility must comply with the requirements of this subpart.

(i) In this subpart, regulatory measurements, whether in the metric or English system, are sometimes followed by approximate equivalent measurements in parentheses, which are given solely for the reader's convenience. Regulatory compliance with the regulatory measurement is required.

§ 154.2001 Definitions.

As used in this subpart only:

Ambient temperature means the temperature of the environment in which an experiment is conducted or in which any physical or chemical event occurs.

Barge cargo connection means the point in a barge's cargo system where it connects with the hose assembly or loading arm used for cargo transfer.

Barge vapor connection means the point in a barge's piping system where it connects to a vapor collection hose or arm. This may be the same as the barge's cargo connection as it controls vapors during barge cargo tank-cleaning operations.

Base loading means a method of inerting, enriching, or diluting such that sufficient inerting, enriching, or diluting gas, for the worst concentration of vapor coming from the vessel, is injected into the vapor line during the entire loading operation so that the vapor mixture is inerted, enriched, or diluted at the maximum loading rate. For inerting and enriching systems, "worst concentration" means the vapor stream contains no cargo vapor. For a diluting system, "worst concentration" means the vapor stream is saturated with cargo vapor.

Captain of the Port (COTP) means the cognizant Coast Guard Captain of the Port as defined in 33 CFR 154.105.

Certifying entity means an individual or organization accepted by the Commandant to review plans, data, and calculations for vapor control system designs and to conduct inspections and witness tests of vapor control system installations.

Cleaning operation means any stripping, gas-freeing, or tank-washing operation of a barge's cargo tanks conducted at a cleaning facility.

Combustible liquid means any liquid that has a flashpoint above 80 °F (as determined from an open-cup tester, as used to test burning oils) and includes Grade D and Grade E combustible liquids defined in 46 CFR 30.10–15.

Commandant means Commandant (CG–522), U.S. Coast Guard, 2100 2nd St., SW., Stop 7126, Washington, DC 20593–7126.

Detonation arrester means a device that is acceptable to the Commandant and includes a detonation arrester that is designed, built, and tested in accordance with Appendix A of this part or by another method acceptable to the Commandant for arresting flames and detonations.

Diluting means introducing a non-flammable and non-combustible gas with the objective of reducing the hydrocarbon content of a vapor mixture to below the lower flammable limit so that it will not burn.

Drip leg means a section of piping that extends below piping grade to collect liquid passing through the vapor line and that has a diameter no more than the diameter of the pipe in which it is installed.

Elevated temperature means the temperature that exceeds 70 percent of the auto-ignition temperature, in degrees Celsius, of the vapors being collected.

Enriching means introducing a flammable gas with the objective of raising the hydrocarbon content of a vapor mixture above the upper flammable limit so that it will not burn.

Existing vapor control system means a vapor control system that satisfies the requirements of this subpart as certified by a certifying entity prior to [EFFECTIVE DATE OF FINAL RULE].

Facility main vapor control system means a vapor control system that primarily serves plant processing areas unrelated to tank vessel operations, such as the refinery process, tank storage areas, or tank truck or railcar loading areas.

Facility operations manual means the manual required by 33 CFR 154.300, the contents of which are described in 33 CFR 154.310.

Facility vapor connection means the point in a facility's vapor collection system where it connects to a vapor collection hose or the base of a vapor collection arm and is located at the dock

as close as possible to the tank vessel to minimize the length of the flexible vapor collection hose, thus reducing the hazards associated with the hose.

Fail-safe means a piece of equipment or instrument that is designed such that if any element should fail, it would go to a safe condition.

Fixed stripping line means a pipe extending to the low point of each cargo tank, welded through the deck and terminating above the deck with a valve plugged at the open end.

Flammable liquid means any liquid that gives off flammable vapors (as determined by flashpoint from an open-cup tester, as used to test burning oils) at or below a temperature of 80 °F, and includes Grades A, B, and C flammable liquids defined in 46 CFR 30.10–22.

Flame arrester means a device that is designed, built, and tested in accordance with ASTM F 1273 or UL 525 (both incorporated by reference, *see* 33 CFR 154.106) for use in end-of-line applications for arresting flames.

Flame screen means a fitted single screen of corrosion-resistant wire of at least 30-by-30 mesh, or two fitted screens, both of corrosion-resistant wire, of at least 20-by-20 mesh, spaced apart not fewer than 12.7 millimeters (0.5 inch) or more than 38.1 millimeters (1.5 inches).

Fluid displacement system means a system that removes vapors from a barge's cargo tanks during gas freeing through the addition of an inert gas or other medium into the cargo tank.

Fluid injection connection means the point in a fluid displacement system at which the fixed piping or hose that supplies the inert gas or other medium connects to a barge's cargo tanks or fixed piping system.

Gas freeing means the removal of vapors from a tank barge.

Grade A, B, C, D, or E means any Grade A, B, or C flammable liquid defined in 46 CFR 30.10–22 or any Grade D or E combustible liquid defined in 46 CFR 30.10–15.

High flash point cargoes means Grade E cargoes and cargoes having a closed-cup flash point higher than 60 °C (140 °F), carried at a temperature no higher than 5 °C (9 °F) below their flash points.

Inerted means the oxygen content of the vapor space in a tank vessel's cargo tank is reduced to 60 percent or less by volume of the vapor's minimum oxygen concentration for combustion, or to 8 percent by volume or less for the vapor of crude oil, gasoline blends, or benzene, by addition of an inert gas, in accordance with the inert gas requirements of 46 CFR 32.53 or 46 CFR 153.500.

Inerting or *padding* or *purging* means introducing an inert gas to lower the oxygen content of a vapor mixture.

Line clearing or *pigging* means the transfer of residual cargo from a cargo loading line by using compressed gas to propel a "pig" through the line toward a cargo tank.

Liquid knockout vessel means a device, other than a drip leg, used to separate liquid from vapor.

Maximum allowable gas-freeing rate means the maximum volumetric rate at which a barge may be gas-freed during cleaning operations.

Maximum allowable stripping rate means the maximum volumetric rate at which a barge may be stripped during cleaning operations prior to the opening of any hatch and/or fitting in the cargo tank being stripped.

Maximum allowable transfer rate means the maximum volumetric rate at which a vessel may receive cargo or ballast.

Minimum oxygen concentration for combustion or *MOCC* means the lowest level of oxygen in a vapor or a vapor mixture that will support combustion.

Multi-breasted barge-loading operations are those in which barges load side by side with the outboard barge's vapor collection system connected to a facility vapor connection through the inboard barge, as opposed to single-breasted operations involving a single barge.

Multiple facility vapor collection system junction means the point in the vapor collection system where two or more branch lines originating from separate facility vapor connections are connected.

New vapor control system means a vapor control system that is not an existing vapor control system.

Padded or *partially inerted* means the oxygen content of the vapor space in a tank is reduced to below what is normally present in the atmosphere by the addition of an inert gas such as nitrogen or carbon dioxide, but not to the concentration that meets the definition of "inerted" in this section.

Pig means any device designed to maintain a tight seal within a cargo line while being propelled by compressed gas towards a cargo tank, for the purpose of transferring residual cargo from the cargo loading line to the cargo tank.

Pre-transfer conference means the conference required by 33 CFR 156.120(w).

Stripping means the removal, to the maximum extent practicable, of cargo residue remaining in the barge's cargo tanks and associated fixed piping system after cargo transfer or during cleaning operations.

Tank barge cleaning facility or *TBCF* means a facility used or capable of being used to conduct cleaning operations on a tank barge.

Transfer facility means a facility as defined in 33 CFR 154.105, excluding tank barge cleaning or stripping facilities.

Vacuum displacement system means a system that removes vapors from a barge's cargo tanks during gas freeing by sweeping air through the cargo tank hatch openings.

Vapor balancing means the transfer of vapor displaced by incoming cargo from the tank of a vessel or facility receiving cargo into a tank of the vessel or facility delivering cargo via facility vapor collection system.

Vapor collection system means an arrangement of piping and hoses used to collect vapor emitted to or from a vessel's cargo tanks and to transport the vapor to a vapor processing unit or a tank.

Vapor control system or *VCS* means an arrangement of piping and equipment used to control vapor emissions collected to or from a vessel and includes the vapor collection system and the vapor processing unit or a tank.

Vapor destruction unit means a vapor processing unit that destroys cargo vapor by a thermal destruction method.

Vapor dispersion unit means a vapor processing unit that releases cargo vapor into the atmosphere through a venting system not located on the tank vessel.

Vapor processing unit means the components of a vapor control system that recover, destroy, or disperse vapor collected from a vessel.

Vapor recovery unit means a vapor processing unit that recovers cargo vapor by nondestructive means.

Vessel vapor connection means the point in a vessel's fixed vapor collection system where it connects to a vapor collection hose or arm.

Certifying Entities

§ 154.2010 Qualifications for acceptance as a certifying entity.

To qualify for acceptance as a vapor control system (VCS) certifying entity, the entity must demonstrate to the satisfaction of the Commandant that it possesses the following minimum qualifications:

(a) The ability to review and evaluate design drawings and failure analyses for compliance to this subpart;

(b) The knowledge of the applicable regulations of this subpart, including the standards incorporated by reference;

(c) The ability to monitor and evaluate test procedures and results for compliance with the operational requirements of this subpart;

(d) The ability to perform inspections and witness tests of bulk liquid cargo-handling systems;

(e) That the applicant is not controlled by an owner or operator of a vessel or facility engaged in controlling vapor emissions;

(f) That the applicant is not dependent upon Coast Guard acceptance under this section to remain in business; and

(g) That the person in charge of VCS certification is currently a licensed professional engineer.

§ 154.2011 Application for acceptance as a certifying entity.

(a) An applicant seeking Coast Guard acceptance as a certifying entity of vapor control systems (VCSs) must submit a signed, written application to the Commandant. The applicant's signature certifies that the information in the application is true and that the applicant is not dependent upon Coast Guard acceptance under this section to remain in business and constitutes consent for the Coast Guard to verify any information contained in the application, through personal examination of persons named in the application, or otherwise. If an applicant knowingly and willfully provides any false statement or misrepresentation, or conceals a material fact in the application, the application may be denied or terminated, and the applicant may be subject to prosecution under the provisions of 18 U.S.C. 1001.

(b) An application must include the following general information:

(1) The name and address of the applicant, including subsidiaries and divisions if applicable;

(2) A description of the experience and qualifications of any person who would review or test systems on behalf of the applicant, showing that the person is familiar with or otherwise qualified to implement Coast Guard VCS regulations; and

(3) A letter from a facility owner or operator stating his or her intent to use the services of the applicant to certify VCS installations.

(c) The Commandant reviews each application and either issues a letter of acceptance as a certifying entity to the applicant, or notifies the applicant that it is not accepted, and maintains a list of currently accepted certifying entities that is available to the public at *http://homeport.uscg.mil.*

(d) The acceptance of a certifying entity may be terminated by the Commandant for failure to review, inspect, or test a system properly in accordance with this subpart.

(e) A certifying entity may not certify a facility VCS if that certifying entity was involved in the design or installation of the system. "Design or installation" includes but is not limited to—

(1) Performing calculations;

(2) Providing chemical data;

(3) Developing plans, specifications, and drawings;

(4) Conducting failure analysis; and

(5) Installing systems or components.

(f) A certifying entity may not conduct the failure analysis of a facility VCS it is certifying. The certifying entity may only point out shortcomings shown by the failure analysis and may not propose changes to correct the shortcomings.

(g) A certifying entity may not certify the VCS of any vessel or facility owner or operator that owns or has a controlling interest in the certifying entity.

Certification, Recertification, and Operational Review

§ 154.2020 Certification and recertification—Owner/operator responsibilities.

(a) Prior to operating, a new vapor control system (VCS) installation must be certified under 33 CFR 154.2023 by a certifying entity as meeting the requirements of this subpart.

(b) A certified VCS or a Coast Guard-approved VCS that was operating prior to July 23, 1990 must be recertified by a certifying entity under 33 CFR 154.2023 before it can—

(1) Control vapors other than those for which it was originally certified;

(2) Receive vapors from vessels other than those for which it was approved, if the VCS was in operation prior to July 23, 1990;

(3) Operate under any changed design or configuration;

(4) Operate as part of multi-breasted barge-loading operations, if the VCS was not originally approved or certified for such operations; or

(5) Be connected to a tank vessel if a cargo line clearance system is used to clear cargo in the cargo line back to the tank vessel.

(c) Prior to operating a VCS to control vapor from a tank vessel during cargo line clearing if a cargo line clearance system is used to clear cargo in the cargo line back to the tank vessel, the cargo line clearance system must be reviewed by a certifying entity as meeting the requirements of 33 CFR 154.2104.

(d) To apply for certification, the owner or operator of a facility VCS must submit plans, calculations, specifications, and other related information, including a qualitative failure analysis, to the certifying entity. Suggested guidance for preparing qualitative and optional quantitative failure analyses can be obtained from *http://homeport.uscg.mil.* The analysis must demonstrate that—

(1) The VCS can operate continuously and safely while controlling cargo vapors to or from tankships or tank barges over the full range of transfer rates expected at the facility;

(2) The VCS has the proper alarms and automatic shutdown systems required by this subpart to prevent an unsafe operation;

(3) The VCS has sufficient automatic or passive devices to minimize damage to personnel, property, and the environment if an accident were to occur;

(4) If a quantitative failure analysis is also conducted, the level of safety attained is at least one order of magnitude greater than that calculated for operating without a VCS; and

(5) If a facility uses a cargo line clearance system to clear cargo in the cargo line back to the tank vessel with the VCS connected, the qualitative failure analysis must demonstrate that the cargo line clearance system has at least the same levels of safety required by paragraphs (d)(1), (d)(2), and (d)(3) of this section to prevent overpressure of the vessel's cargo tanks and account for the probability that the pig is destroyed during line-clearing operations.

(e) The VCS owner or operator must maintain at the facility—

(1) A copy of VCS design documentation, including plans, drawings, calculations, and specifications for the VCS;

(2) The facility operations manual, including the list of cargoes that the facility is approved to vapor control; and

(3) Any certification or recertification letter issued under 33 CFR 154.2023.

§ 154.2021 Operational review—Owner/operator responsibilities.

(a) Each facility vapor control system (VCS) must undergo an operational review by a certifying entity within three years of its initial certification or last operational review, to ensure its proper operation and maintenance.

(b) The VCS owner or operator must coordinate with the certifying entity and provide the entity with all necessary documentation and records to conduct the operational review.

(c) The VCS owner or operator must notify the Captain of the Port (COTP) of

a scheduled operational review. The COTP, at his or her discretion, may witness the operational review.

(d) The VCS owner or operator must maintain, at the facility, the latest operational review letter issued under 33 CFR 154.2023.

§ 154.2022 Certification, recertification, or operational review—Certifying entity responsibilities, generally.

(a) Before certifying or recertifying a facility vapor control system (VCS), the certifying entity must—

(1) Review all VCS design documentation, including plans, drawings, calculations, specifications, and failure analysis, to ensure that the VCS design meets the requirements of this subpart;

(2) Review all chemical data in accordance with paragraph (c) of this section, to confirm that the VCS is properly designed for controlling each specific chemical vapor;

(3) Conduct an initial onsite inspection to ensure that the VCS installation conforms to the VCS plans, drawings, and specifications reviewed;

(4) Conduct onsite reviews and witness tests in accordance with paragraph (d) of this section, to ensure the VCS's proper operation in accordance with its design and compliance with applicable regulations and the facility's operations manual;

(5) Review, inspect, and witness tests of all design or configuration alterations before recertifying a VCS that was certified or approved for operation prior to July 23, 1990, to ensure that the altered system complies with applicable regulations;

(6) Review the VCS design in accordance with paragraph (e) of this section, prior to recertifying the VCS for the control of additional cargo vapors;

(7) Review the VCS in accordance with paragraph (f) of this section, prior to certifying or recertifying it to control vapors from barge cargo tanks during multi-breasted barge-loading operations;

(8) Review a cargo line clearance system as meeting the requirements of 33 CFR 154.2104 if such a system is used to clear cargo in the cargo line back to a tank vessel prior to certifying or recertifying a VCS to control vapor from the tank vessel during cargo line clearance operations; and

(9) Review the facility operations manual to ensure that it meets the requirements of 33 CFR 154.310(b).

(b) In conducting an operational review to ensure that the VCS is properly operating and maintained, the certifying entity must ensure, at a minimum—

(1) The completeness, currency, and accuracy of the facility operations manual, training plans, and VCS test procedures;

(2) Proper maintenance and operation of VCS components, through visual inspection; and

(3) That cargo transfer or tank-cleaning barge operational procedures are properly followed and the VCS operates properly, through observation of the initial stages of transfer or cleaning, including 24-hour pre-transfer tests required by 33 CFR 154.2150(b) or 33 CFR 154.2250(b), the pre-transfer conference, and initial system startup procedures.

(c) For each of the following, if applicable, the certifying entity's review of chemical data must ensure that—

(1) Each chemical's maximum experimental safe gap, minimum oxygen concentration for combustion (MOCC), and upper and lower limits of flammability have been correctly determined, which may be determined using Coast Guard guidance available at *http://homeport.uscg.mil*;

(2) Each detonation arrester used in the VCS is correct for each chemical's maximum experimental safe gap;

(3) Setpoints for each oxygen analyzer used in the VCS are correct for each chemical's MOCC;

(4) Setpoints for each oxygen or hydrocarbon analyzer used in the VCS are correct for each chemical's upper or lower flammability limit;

(5) Each vapor-controlled chemical is compatible with other chemicals and with inerting, enriching, or diluting gases added to the VCS per 46 CFR part 150, Table I and Table II;

(6) Each vapor-controlled chemical is compatible with all VCS components;

(7) Each vapor-controlled chemical is listed in one of the following: 46 CFR part 30, Table 30.25–1; 46 CFR part 151, Table 151.05; 46 CFR part 153, Table 1 and Table 2; or as specified in writing by the Commandant;

(8) The flash point for any cargo with a closed-cup flash point of 60 °C (140 °F) or higher is properly determined;

(9) Any test program used for instrument testing and calibration conforms with 33 CFR 154.2180 and 33 CFR 154.2181; and

(10) Any calculation to determine the duration of purging required by 33 CFR 154.2150(o) is correct.

(d) The certifying entity must ensure—

(1) That each alarm and shutdown, shown on the piping and instrumentation diagrams and reviewed in the hazard analysis as part of the system, responds properly, through simulation of emergency conditions to activate the alarm or shutdown;

(2) That maximum vacuum can be maintained at the maximum operating conditions of any vapor-moving device, through testing of the vacuum breaker;

(3) That VCS shutdown occurs correctly, through the startup of the VCS and tripping of each shutdown loop while the VCS is not connected to a vessel;

(4) That VCS startup, normal operation, and shutdown occur properly, through witnessing the relevant portions of a test loading or unloading of one vessel, or a test cleaning of one tank barge at a tank barge cleaning facility; and

(5) That the automatic liquid block valve successfully stops flow of liquid to the vessel during a system shutdown, through witnessing the relevant portions of a test loading or test cargo tank cleaning.

(e) Prior to recertifying the VCS for the control of additional cargo vapors, the certifying entity must review the VCS design to ensure that, with respect to each additional vapor, the—

(1) System complies with 33 CFR 154.2103(a) and (b) or 33 CFR 154.2203(a) and (b);

(2) Inerting, enriching, or diluting system is adequate;

(3) Vapor recovery or destruction unit is adequate;

(4) Mechanical equipment and systems are suitable;

(5) Vapor properties and characteristics are addressed, including freezing point, polymerization potential, solubility, and cargo compatibility;

(6) VCS's failure analysis addresses any new hazards presented; and

(7) Facility operations manual's VCS addendum has been modified to list each additional vapor.

(f) Prior to certifying or recertifying a VCS to control vapors from barge cargo tanks during multi-breasted barge-loading operations, the certifying entity must confirm that—

(1) The overfill control system required by 33 CFR 154.2102 will process a liquid overfill condition within any one cargo tank on each barge;

(2) If multi-breasted loading is conducted using more than one liquid transfer hose from the shore facility, the facility is capable of activating the emergency shutdown system required by 33 CFR 154.550, and can automatically stop the cargo flow to each transfer hose simultaneously, in the event an upset condition occurs that closes the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a);

(3) The facility operations manual has been modified to include the procedures for multi-breasted barge-loading operations; and

(4) The facility operations manual describes how to make proper connections, on the facility side, between the alarm and shutdown systems of the VCS and of each barge being loaded.

§ 154.2023 Certification, recertification, or operational review—Certifying entity documentation.

(a) If the certifying entity is satisfied that the facility's vapor control system (VCS) has successfully undergone the reviews, inspections, and tests required by 33 CFR 154.2022(a) for certification or recertification, and that the VCS will operate properly and safely, the certifying entity must certify or recertify the VCS by issuing a certification letter to the facility owner or operator, and by sending copies of the letter to the Captain of the Port (COTP) and the Commandant. The certification letter must refer by date to the certifying entity's letter of acceptance issued under 33 CFR 154.2011(c), and must—

(1) State that the facility complies with applicable regulations and with its operations manual, and list any exemptions to the applicable regulations that have been approved by the Coast Guard;

(2) Report on all reviews, inspections, and tests undergone by the VCS in accordance with 33 CFR 154.2022(a);

(3) List all plans and drawings that were reviewed by the certifying entity;

(4) State if the VCS may control vapors from tank barges that are required to have a shore-side, explosion-proof receptacle or an overfill control system required by 33 CFR 154.2102(a) and (b); and

(5) List all cargoes that the certifying entity approves for control by the VCS.

(b) If the certifying entity is satisfied that the facility's VCS has successfully undergone the operational review required by 33 CFR 154.2022(b), the certifying entity must issue an operational review letter to the facility owner or operator, and send copies of the letter to the COTP and the Commandant. The operational review letter must—

(1) List each item reviewed and inspected;

(2) Describe the transfer or cleaning operation observed; and

(3) Summarize the review's results.

Personnel

§ 154.2030 Transfer facilities.

(a) Personnel in charge of a transfer operation using a vapor control system (VCS) must have completed a training program covering the particular VCS installed at the facility. As part of the training program, personnel must be able to demonstrate, through drills and display of practical knowledge, the proper VCS operational procedures for normal and emergency conditions. The training program must cover the following subjects:

(1) Purpose of the VCS;

(2) Principles of the VCS;

(3) Components of the VCS;

(4) Hazards associated with the VCS;

(5) Coast Guard regulations in this subpart;

(6) Operating procedures, including:

(i) Transfer, testing, and inspection requirements;

(ii) Pre-transfer procedures;

(iii) Chemicals approved for collection;

(iv) Material safety data sheet review;

(v) Connection procedures;

(vi) Startup procedures;

(vii) Normal operating conditions and how to handle deviations from normal conditions;

(viii) Normal shutdown procedures; and

(ix) Operating procedures for cargo line clearing if a cargo line clearance system is installed in accordance with 33 CFR 154.2104; and

(7) Emergency procedures.

(b) Personnel overseeing VCS maintenance must be familiar with—

(1) Inspection of detonation arresters; and

(2) Procedures for equipment and instrumentation testing required by 33 CFR 156.170(g).

§ 154.2031 Tank barge cleaning facilities.

(a) In addition to complying with 33 CFR 154.2030, a tank barge cleaning facility (TBCF) person in charge of a barge cargo tank-cleaning operation that uses a vapor control system (VCS) must complete a training program covering the particular systems installed at the facility and on the barge. As part of the training program, personnel must be able to demonstrate, through drills and practical knowledge, the proper VCS operation procedures for normal and emergency conditions. The training program must—

(1) Satisfy the requirements of 33 CFR 154.2030(a)(1) through (a)(7) and 33 CFR 154.2030(b) and cover—

(i) Purpose, principles, components, and hazards associated with stripping and gas-freeing;

(ii) Special hazards associated with the accumulation and discharge of static electricity; and

(iii) Operating procedures, including pre-cleaning procedures, and safeguards to prevent static electricity discharge.

(b) In addition to the requirements contained in 33 CFR 154.710, no person may serve, and the facility operator may not use the services of anyone, as a facility person in charge of a cleaning operation unless the person has been properly trained and certified by the facility with a minimum of 60 hours of experience in cleaning operations.

Transfer Facilities—VCS Design and Installation

§ 154.2100 Vapor control system, general.

(a) Vapor control system (VCS) design and installation must eliminate potential overpressure and vacuum hazards, overfill hazards, sources of ignition, and mechanical damage to the maximum practicable extent. Each remaining hazard source that is not eliminated must be specifically addressed in the protection system design and system operational requirements.

(b) Vapor collection system pipe and fitting components must be in accordance with ANSI B31.3 (incorporated by reference, *see* 33 CFR 154.106) with a maximum allowable working pressure (MAWP) of at least 150 pounds per square inch gauge (psig). Valves must be in accordance with ANSI B16.34, 150 pound class (incorporated by reference, *see* 33 CFR 154.106). Flanges must be in accordance with ANSI B16.5 or B16.24, 150 pound class (both incorporated by reference, *see* 33 CFR 154.106). The following components and their associated equipment do not have a minimum specified MAWP, but must be constructed to acceptable engineering standards and have the appropriate mechanical strength to serve the intended purpose: Knockout drums, liquid seals, blowers/compressors, flare stacks/incinerators, and other vapor processing units.

(c) All VCS electrical equipment must comply with NFPA 70 (incorporated by reference, *see* 33 CFR 154.106).

(d) Any pressure, flow, or concentration indication required by this part must provide a remote indicator on the facility where the cargo transfer system and VCS are controlled, unless the local indicator is clearly visible and readable from the operator's normal position at the control stations.

(e) Any condition requiring an alarm as specified in this part must activate an audible and visible alarm where the cargo transfer and VCSs are controlled.

(f) For a VCS installed after [EFFECTIVE DATE OF FINAL RULE], an alarm or shutdown must be activated if electrical continuity of an alarm or shutdown sensor required by this subpart is lost.

(g) The VCS piping surface temperature must not exceed 177 °C

(350 °F) or 70 percent of the auto-ignition temperature in degrees Celsius of the vapors being transferred, whichever is lower, during normal operations. This must be achieved by either separating or insulating the entire VCS from external heat sources.

(h) The VCS must be equipped with a mechanism to eliminate any liquid condensate from the vapor collection system that carries over from the vessel or condenses as a result of an enrichment process.

(1) If a liquid knockout vessel is installed to eliminate any liquid condensate, it must have—

(i) A mechanism to indicate the level of liquid in the device;

(ii) A high liquid level sensor that activates an alarm, meeting the requirements of paragraph (e) of this section;

(iii) A high-high liquid level sensor that closes the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a), and shuts down any vapor-moving devices before carrying liquid over from the vessel to the vapor-moving device. One sensor with two stages may accomplish both this requirement and the requirement of paragraph (h)(1)(ii) of this section; and

(2) If a drip leg is used to eliminate any liquid condensate, a mechanism to remove liquid from the low point.

(i) Vapor collection piping must be electrically grounded and must be electrically continuous.

(j) If the facility handles inerted vapors of cargoes containing sulfur, the facility must control heating from pyrophoric iron sulfide deposits in the vapor collection line.

(k) All VCS components, including piping, hoses, and gaskets, must be suitable for use with the vapor in the VCS.

§ 154.2101 Requirements for facility vapor connections.

(a) A remotely operated cargo vapor shutoff valve must be installed in the vapor collection line between the facility vapor connection and the nearest point where any inerting, enriching, or diluting gas is introduced into the vapor collection line, or where a detonation arrester is fitted. The valve must—

(1) Close within 30 seconds after detection of a shutdown condition of any component required by this subpart;

(2) Close automatically if the control signal or electrical power to the system is interrupted;

(3) Activate an alarm meeting 33 CFR 154.2100(e) when a signal to shut down is received from a component;

(4) Be capable of manual operation or manual activation;

(5) Have a local valve position indicator, or be designed so that the valve position can be readily determined from the valve handle or valve stem position; and

(6) If the valve seat is fitted with resilient material, be a Category A valve as defined by 46 CFR 56.20–15 and not allow appreciable leakage when the resilient material is damaged or destroyed.

(b) Except when a vapor collection arm is used, the first 1 meter (3.3 feet) of vapor piping downstream of the facility vapor connection must be—

(1) Painted in the sequence of red/yellow/red. The width of the red bands must be 0.1 meter (0.33 foot) and the width of the middle yellow band must be 0.8 meter (2.64 feet); and

(2) Labeled with the word "VAPOR" painted in black letters at least 50.8 millimeters (2 inches) high.

(c) Each facility vapor connection flange face must have a permanent stud projecting outward that is 12.7 millimeters (0.5 inch) in diameter and is at least 25.4 millimeters (1 inch) long. It must be located at the top of the flange face, midway between boltholes, and in line with the bolthole pattern.

(d) Each hose that transfers vapors must—

(1) Have a design burst pressure of at least 25 pounds per square inch gauge (psig);

(2) Have a maximum allowable working pressure no less than 5 psig;

(3) Be capable of withstanding at least a 2 pounds per square inch (psi) vacuum without collapsing or constricting;

(4) Be electrically continuous with a maximum resistance of 10,000 ohms;

(5) Have flanges with—

(i) A bolthole arrangement complying with the requirements for 150 pound class flanges, ANSI B16.5 (incorporated by reference, *see* 33 CFR 154.106); and

(ii) One or more 15.9 millimeter (0.625 inch) diameter holes in the flange face, located midway between boltholes, and in line with the bolthole pattern;

(6) Be resistant to abrasion and kinking;

(7) Be compatible with vapors being controlled; and

(8) Have the last 1 meter (3.3 feet) of each end of the vapor hose marked in accordance with paragraph (b) of this section.

(e) Vapor hoses must be adequately supported to prevent kinking, collapse, or contact with metal surfaces on the dock during loading or offloading.

(f) Fixed vapor collection arms must—

(1) Meet the requirements of paragraphs (d)(1) through (d)(5) of this section; and

(2) Have the last 1 meter (3.3 feet) of the arm marked in accordance with paragraph (b) of this section.

(g) The facility vapor connection must be electrically insulated from the vessel vapor connection in accordance with OCIMF ISGOTT section 17.5 (incorporated by reference, *see* 33 CFR 154.106). In order to prevent electrical arcing during connection and disconnection of the transfer hose/arm, the transfer hose/arm must be fitted with an insulating flange or a single length of non-conducting hose to ensure electrical discontinuity between the vessel and facility. The insulating flange/hose must not be electrically bypassed.

(h) A vapor collection system, fitted with a gas injection system that operates at a positive gauge pressure at the facility vapor connection, must be fitted with a mechanism to prevent backflow of vapor to the vessel's vapor collection system during loading.

§ 154.2102 Facility requirements for vessel liquid overfill protection.

This section does not apply to facilities collecting vapors emitted from vessel cargo tanks while inerting the cargo tanks.

(a) Each facility that receives cargo vapor from a tank barge that is fitted with overfill protection, in accordance with 46 CFR 39.2009(a)(1)(iii), must provide a 120-volt, 20-amp explosion-proof receptacle for the overfill protection system that meets—

(1) NEMA WD–6 (incorporated by reference, *see* 33 CFR 154.106);

(2) NFPA 70, National Electrical Code, 2002, Articles 410–57 and 501–12 (incorporated by reference, *see* 33 CFR 154.106); and

(3) 46 CFR 111.105–9.

(b) Each facility that receives cargo vapor from a tank barge that is fitted with an intrinsically safe cargo tank level sensor system complying with 46 CFR 39.2009(b), as a means of overfill protection, must have an overfill control system on the dock capable of powering and receiving an alarm and shutdown signal from the cargo tank level sensor system that—

(1) Closes the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a) and activates the emergency shutdown system required by 33 CFR 154.550 when—

(i) A tank overfill signal is received from the barge; or

(ii) Electrical continuity of the cargo tank level sensor system is interrupted;

(2) Activates an audible and visible alarm that warns barge and facility personnel when a tank overfill signal, or an optional high-level signal

corresponding to a liquid level lower than the tank overfill sensor setting, is received from the barge;

(3) Has a mechanism to test the alarms and automatic shutdown systems electrically and mechanically before operating the vapor control system (VCS);

(4) Has suitable means, such as approved intrinsic safety barriers able to accept passive devices, so that the overfill and optional alarm circuits on the barge side of the overfill control system, including cabling, normally closed switches, and pin and sleeve connectors, are intrinsically safe;

(5) Is labeled at the dock with the maximum allowable inductance (in millihenrys) and capacitance (in microfarads) to be connected to the facility overfill protection system as specified by the equipment manufacturer; and

(6) Has a female connecting plug for the tank barge level sensor system with a five-wire, 16-ampere connector body meeting IEC 60309–1 and IEC 60309–2 (both incorporated by reference, *see* 33 CFR 154.106), which is—

(i) Configured with pins S2 (N) and R1 (L3) for the tank overfill sensor circuit, pin G connected to the cabling shield, and pins N (L2) and T3 (L1) reserved for an optional high-level alarm connection;

(ii) Labeled "Connector for Barge Overfill Control System"; and

(iii) Connected to the overfill control system by a shielded flexible cable.

§ 154.2103 Facility requirements for vessel vapor overpressure and vacuum protection.

In this section, the requirements of having a flame arrester or a flame screen at the opening of a pressure relief valve or a vacuum relief valve apply only to facilities collecting vapors of flammable, combustible, or non-high flash point liquid cargoes.

(a) A facility's vapor control system (VCS) must have the capacity for collecting cargo vapor at a rate of not less than the facility's maximum liquid transfer rate for cargoes that are vapor controlled plus the vapor growth for the cargoes and any inerting, diluting, or enriching gas that may be added to the system. Vapor growth must be considered as 25 percent of the cargo's true vapor pressure in pounds per square inch absolute (psia) at 115 °F, divided by the vapor pressure of gasoline at 115 °F (12.5 psia), unless there is experimental data for actual vapor growth for turbulent transferring under the most severe conditions for vapor growth. If the cargo is transferred at temperatures above 115 °F, the cargo's true vapor pressure (in psia) at the transferring temperature must be used when determining the vapor growth.

(b) A facility VCS must be designed to prevent the pressure in a vessel's cargo tanks from going below 80 percent of the highest setting of any of the vessel's vacuum relief valves or exceeding 80 percent of the lowest setting of any of the vessel's pressure relief valves for a non-inerted tank vessel. A facility VCS also must be designed to prevent the pressure in a vessel's cargo tanks from going below 0.2 pounds per square inch gauge (psig) or exceeding 80 percent of the lowest setting of any of the vessel's pressure relief valves for an inerted tank vessel. The system must sustain the pressure in the vessel's cargo tanks within this range at any cargo transfer rate less than or equal to the maximum transfer rate determined at the pre-transfer conference.

(c) The pressure measured at the facility vapor connection must be corrected for pressure drops across the vessel's vapor collection system, vapor collection hose or arm, and vapor line up to the location of the pressure sensor.

(d) The facility vapor connection must have a pressure-sensing device that meets the installation requirements of paragraph (h) of this section, which activates an alarm that meets 33 CFR 154.2100(e) when the pressure at the facility vapor connection exceeds either—

(1) The pressure corresponding to the upper pressure determined in paragraph (b) of this section; or

(2) A lower pressure agreed upon at the pre-transfer conference.

(e) If a facility draws vapor from a vessel with a vapor-moving device, the facility vapor connection must have a pressure-sensing device, which activates an alarm meeting 33 CFR 154.2100(e) when the pressure at the facility vapor connection falls below either—

(1) The pressure corresponding to the lower pressure determined in paragraph (b) of this section; or

(2) A higher pressure agreed upon at the pre-transfer conference.

(f) The facility vapor connection must have a pressure-sensing device, independent of the device used to activate the alarm required by paragraph (d) of this section, meeting the installation requirements of paragraph (h) of this section, which activates the emergency shutdown system required by 33 CFR 154.550 when the pressure at the facility vapor connection exceeds the lower of the following:

(1) A pressure corresponding to 90 percent of the vessel's lowest pressure relief valve setting, corrected for pressure drops across the vessel's vapor collection system, the vapor collection hose or arm, and any vapor line up to the point where the pressure sensor is located;

(2) A pressure corresponding to 90 percent of the setting of the pressure relief valve at the facility vapor connection, if the facility vapor connection is installed with a pressure relief valve; or

(3) A lower pressure than the pressure in paragraphs (f)(1) and (f)(2) of this section that is agreed upon at the pre-transfer conference.

(g) If a facility draws vapors from a vessel with a vapor-moving device, the facility vapor connection must have a pressure-sensing device, independent of the device used to activate the alarm required by paragraph (e) of this section, which closes the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a) when the vacuum at the facility vapor connection is more than the higher (lesser vacuum) of the following:

(1) A vacuum corresponding to 90 percent of the vessel's highest vacuum relief valve setting;

(2) A vacuum corresponding to 90 percent of the setting of the vacuum relief valve at the facility vapor connection, if the facility vapor connection is installed with a vacuum relief valve; or

(3) A lesser vacuum than the vacuum in paragraphs (g)(1) and (g)(2) of this section that is agreed upon at the pre-transfer conference.

(h) The pressure-sensing devices required by paragraphs (d) and (f) of this section must be located in the vapor collection line between the facility vapor connection and the following:

(1) Any isolation valve, unless an interlock is provided that prevents operation of the system when the isolation valve is closed; and

(2) Any components that could plug and cause a blockage in the vapor line.

(i) A pressure-indicating device must be provided that displays the pressure in the vapor collection line between the facility vapor connection and any isolation valve or any devices which could cause a blockage in the vapor line.

(j) If a facility draws vapor from the vessel with a vapor-moving device capable of drawing more than 1 pound per square inch (psi) vacuum, a vacuum relief valve must be installed in the vapor collection line between the vapor-moving device and the facility vapor connection, which—

(1) Relieves at a predetermined pressure such that the pressure at the facility vapor connection is maintained at or above 13.7 psia (−1 psig);

(2) Has a relieving capacity equal to or greater than the capacity of the vapor-moving device;

(3) Has a flame arrester or flame screen fitted at the vacuum relief opening; and

(4) Has been tested for relieving capacity in accordance with paragraph 1.5.1.3 of API 2000 (incorporated by reference, *see* 33 CFR 154.106) with a flame arrester or flame screen fitted.

(k) When a facility collects cargo vapor through an extensive length of vapor piping before reaching the first pressure sensor and vacuum relief valve, the vacuum relief valve may be set at a vacuum greater than 1 psi vacuum, provided the pressure controls take into account the pressure drop across the vessel's vapor collection system, any vapor collection hoses, and the vapor piping as a function of the actual transfer rate.

(l) If the pressure in the vapor collection system can exceed 1.5 psig during a malfunction of a pressure regulator or control valve in an inerting, enriching, or diluting system, a pressure relief valve must—

(1) Be located between where the inerting, enriching, or diluting gas is introduced into the vapor collection system and the facility vapor connection;

(2) Relieve at the higher of the following two pressures:

(i) A pressure such that the pressure at the facility vapor connection does not exceed 1.5 psig; or

(ii) The lowest pressure relief valve setting of vessels that control vapors at the facility;

(3) Have a relieving capacity equal to or greater than the maximum capacity of the facility inerting, enriching, or diluting gas source flowing through the failed pressure regulator or control valve, taking into account the pressure drops across any flame arrester or discharge piping fitted at the relief valve's discharge;

(4) Have a flame arrester or flame screen fitted at the discharge opening, if the design does not secure a minimum vapor discharge velocity of 30 meters (98.4 feet) per second; and

(5) Have been tested for relieving capacity in accordance with paragraph 1.5.1.3 of API 2000.

(m) The relieving capacity test required by paragraph (l)(5) of this section must be carried out with a flame screen fitted at the discharge opening if—

(1) The design of the pressure relief valve does not secure a minimum vapor discharge velocity of 30 meters (98.4 feet) per second; and

(2) The discharge is not fitted with a flame arrester.

(n) A facility that collects vapors emitted from vessel cargo tanks while inerting cargo tanks must—

(1) Provide a pressure-sensing device that activates an alarm meeting 33 CFR 154.2100(e) when the pressure of the inerting gas exceeds either the pressure corresponding to the higher pressure determined in paragraph (b) of this section or a lower pressure agreed upon at the pre-transfer conference;

(2) Provide a pressure-sensing device, independent of the device required by paragraph (n)(1) of this section, which automatically stops the flow of inerting, padding, or purging gas to the vessel when the pressure of the inerting gas exceeds 90 percent of the lowest setting of any pressure relief valve on the vessel; and

(3) Locate the pressure-sensing devices required by paragraphs (n)(1) and (n)(2) of this section in the inerting piping downstream of any devices that could potentially isolate the vessel from the sensing devices.

§ 154.2104 Cargo line clearance system.

If a line clearance (pigging) system is used to clear cargo in the cargo lines to the tank vessel while the vessel is connected to the facility vapor control system (VCS), the pigging system must be designed with the following safety features:

(a) A bypass loop installed in the main liquid cargo line that contains the pig-receiving device, through which all the liquid flow is channeled during pigging operations. The pig must act as a seal to separate the vessel from the compressed gas that is used to propel it as the pig travels from the pig launcher to the pig-receiving device;

(b) A mechanism for restricting liquid and gas flow so that the vessel, personnel, and environment are not endangered. The compressed gas flow capacity that this mechanism secures must not be more than 95 percent of the combined capacity of all vessel and facility VCS relief valves located upstream of the facility's remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a);

(c) An automatic shutoff valve, which closes on a high-pressure signal from the pressure sensor required by 33 CFR 154.2103(f), located in the liquid bypass loop downstream of the pig-receiving device;

(d) An interlock with the main cargo line manual block valve so that line-clearing operations cannot begin unless the main cargo line manual block valve is closed; and

(e) A means to detect arrival of the pig at the pig-receiving device.

§ 154.2105 Fire, explosion, and detonation protection.

This section applies only to facilities that control vapors of flammable, combustible, or non-high flash point liquid cargoes.

(a) A vapor control system (VCS) with a single facility vapor connection that receives inerted cargo vapor from a vessel and processes it with a vapor recovery unit must—

(1) Be capable of inerting the vapor collection line in accordance with 33 CFR 154.2107(a) before receiving the vessel's vapor and have at least one oxygen analyzer, which satisfies the requirements of 33 CFR 154.2107(f)(1), (f)(2), (g), (h)(2), and (h)(3), sampling the vapor concentration continuously at a point as close as practicable to the facility vapor connection. The total pipe length between the analyzer and the facility vapor connection must not exceed 6 meters (19.7 feet); or

(2) Have a detonation arrester located as close as practicable to the facility vapor connection. The total pipe length between the detonation arrester and the facility vapor connection must not exceed 18 meters (59.1 feet).

(b) A VCS with a single facility vapor connection that receives only inerted cargo vapor from a vessel and processes it with a vapor destruction unit must—

(1) Satisfy the requirements of paragraph (a)(1) of this section and have a detonation arrester located as close as practicable to the facility vapor connection. The total pipe length between the detonation arrester and the facility vapor connection must not exceed 18 meters (59.1 feet); or

(2) Have an inerting system that meets the requirements of 33 CFR 154.2107.

(c) A VCS with a single facility vapor connection that receives vapor from a vessel with cargo tanks that are not inerted or are partially inerted, and processes it with a vapor recovery unit must—

(1) Have a detonation arrester located as close as practicable to the facility vapor connection. The total pipe length between the detonation arrester and the facility vapor connection must not exceed 18 meters (59.1 feet); or

(2) Have an inerting, enriching, or diluting system that meets the requirements of 33 CFR 154.2107.

(d) A VCS with a single facility vapor connection that receives vapor from a vessel with cargo tanks that are not inerted or are partially inerted, and processes the vapor with a vapor destruction unit must—

(1) Have a detonation arrester located as close as practicable to the facility

vapor connection. The total pipe length between the detonation arrester and the facility vapor connection must not exceed 18 meters (59.1 feet); and

(2) Have an inerting, enriching, or diluting system that satisfies the requirements of 33 CFR 154.2107.

(e) A VCS with multiple facility vapor connections that receives vapor from vessels with cargo tanks that carry inerted, partially inerted, non-inerted, or combinations of inerted, partially inerted, and non-inerted cargoes, and processes them with a vapor recovery unit, must have a detonation arrester located as close as practicable to each facility vapor connection. The total pipe length between the detonation arrester and each facility vapor connection must not exceed 18 meters (59.1 feet).

(f) A VCS with multiple facility vapor connections that receives only inerted cargo vapor from vessels and processes it with a vapor destruction unit must—

(1) Satisfy the requirements of paragraph (a)(1) of this section for each facility vapor connection and have a detonation arrester located as close as practicable to each facility vapor connection. The total pipe length between the detonation arrester and each facility vapor connection must not exceed 18 meters (59.1 feet); or

(2) Have an inerting, enriching, or diluting system that meets the requirements of 33 CFR 154.2107.

(g) A VCS with multiple facility vapor connections that receives vapor from vessels with non-inerted or partially inerted cargoes, and processes the vapor with a vapor destruction unit must—

(1) Have a detonation arrester located as close as practicable to each facility vapor connection. The total pipe length between the detonation arrester and each facility vapor connection must not exceed 18 meters (59.1 feet); and

(2) Have an inerting, enriching, or diluting system that meets the requirements of 33 CFR 154.2107.

(h) A VCS with multiple facility vapor connections that simultaneously receives vapor from vessels with inerted, partially inerted, and non-inerted cargoes, and processes the vapor with a vapor destruction unit must—

(1) Have a detonation arrester located as close as practicable to each facility vapor connection. The total pipe length between the detonation arrester and each facility vapor connection must not exceed 18 meters (59.1 feet); and

(2) Have an inerting, enriching, or diluting system that meets the requirements of 33 CFR 154.2107; or

(3) Have a base loading system that meets the requirements of 33 CFR 154.2107(m).

(i) A VCS that uses a vapor balancing system in which cargo vapor from a vessel or facility storage tank is transferred through the facility vapor collection system to facility storage tanks or a vessel must meet the requirements of 33 CFR 154.2110.

(j) Each outlet of a VCS that vents to the atmosphere, except for a discharge vent from a vapor destruction unit or relief valve installed to comply with 33 CFR 154.2103(j) and (k) or 33 CFR 154.2203(e), (k), and (l), must—

(1) Have a detonation arrester located at the outlet; or

(2) Have a flame arrester if—

(i) The discharge vent stream's total flammable concentration is proven to be less than 50 percent of the lower flammable limit at all times by an outlet concentration analyzer for carbon beds, proof of correct operating temperature for refrigeration systems, or proof of scrubbing medium flow for scrubbers; and

(ii) The proving devices in paragraph (j)(2)(i) of this section close the remotely operated cargo vapor shutoff valve required in 33 CFR 154.2101(a) and shut down any vapor-moving device if operating outside the conditions necessary to maintain the discharge vent non-combustible.

§ 154.2106 Detonation arresters installation.

This section applies only to facilities collecting vapors of flammable, combustible, or non-high flash point liquid cargoes.

(a) Each detonation arrester required by this part must be installed with a minimum distance of 0.6 meters (2 feet) from the arrester flange face to any pipe bend, shutoff valve, or other device that restricts the flow area of the piping.

(b) Detonation arresters must be installed in accordance with the guidelines outlined in the arrester manufacturer's acceptance letter provided by the Coast Guard.

(c) Line size expansions in a straight pipe run must be no closer than 120 times the pipe's diameter from the detonation arrester unless the manufacturer has test data to show the expansion can be closer.

§ 154.2107 Inerting, enriching, and diluting systems.

This section applies only to facilities that control vapors of flammable, combustible, or non-high flash point liquid cargoes.

(a) Before receiving cargo vapor, a vapor control system (VCS) that uses a gas for inerting, enriching, or diluting must be capable of inerting, enriching, or diluting the vapor collection line, at a minimum of two-volume exchanges of inerting, enriching, or diluting gas, downstream of the injection point.

(b) A VCS that uses an inerting, enriching, or diluting system must be equipped, except as permitted by 33 CFR 154.2105(a), with a gas injection and mixing arrangement located as close as practicable to the facility vapor connection. The total pipe length between the arrangement and the facility vapor connection must not exceed 22 meters (72.2 feet). The arrangement must be such that it provides complete mixing of the gases within 20 pipe diameters of the injection point.

(c) A VCS that uses an inerting or enriching system may not be operated at a vacuum after the injection point unless—

(1) There are no vacuum relief valves or other devices that could allow air into the vapor collection system downstream of the injection point, and pipe connections are flanged, threaded, or welded so no air can leak into the VCS; or

(2) An additional analyzer is used to monitor the downstream vapor concentration and a mechanism is provided to inject additional inerting or enriching gas.

(d) A VCS that uses analyzers to control the amount of inerting, enriching, or diluting gas injected into the vapor collection line must be equipped with at least two analyzers. The analyzers must be connected so that—

(1) When two oxygen analyzers are used, the higher oxygen concentration reading controls the inerting or enriching system and activates the alarm and automatic shutdown system required by paragraph (h), (j), or (k)(2) of this section;

(2) When more than two oxygen analyzers are used, the majority pair controls the inerting or enriching system and activates the alarm and automatic shutdown system required by paragraph (h), (j), or (k)(2) of this section;

(3) When two hydrocarbon analyzers are used, the lower hydrocarbon concentration reading controls the enriching system and activates the alarm and automatic shutdown system required by paragraph (i) of this section;

(4) When more than two hydrocarbon analyzers are used, the majority pair controls the enriching system and activates the alarm and automatic shutdown system required by paragraph (i) of this section;

(5) When two hydrocarbon analyzers are used, the higher hydrocarbon concentration reading controls the diluting system and activates the alarm

and automatic shutdown system required by paragraph (l) of this section; and

(6) When more than two hydrocarbon analyzers are used, the majority pair controls the diluting system and activates the alarm and automatic shutdown system required by paragraph (l) of this section.

(e) A VCS that uses volumetric measurements to control the amount of inerting, enriching, or diluting gas injected into the vapor collection line must be equipped, except as permitted by paragraph (m) of this section, with at least one analyzer to activate the alarms and automatic shutdown systems required by this section.

(f) Each oxygen or hydrocarbon analyzer required by this section must—

(1) Be installed in accordance with API 550 (incorporated by reference, *see* 33 CFR 154.106);

(2) Have a system response time of not more than one minute from sample input to 95 percent of final stable value as tested per 33 CFR 154.2180 and 33 CFR 154.2181; and

(3) Continuously sample the vapor concentration not more than 30 pipe diameters from the gas injection point.

(g) A VCS must not use oxygen analyzers that operate at elevated temperatures (*i.e.,* zirconia oxide or thermomagnetic).

(h) An inerting system must—

(1) Supply sufficient inert gas to the vapor stream to ensure that the oxygen concentration downstream of the injection point is maintained at or below 60 percent by volume of the minimum oxygen concentration for combustion (MOCC) for the specific combination of cargo vapors and inert gas being processed, which may be determined by using Coast Guard guidance available at *http://homeport.uscg.mil;*

(2) Activate an alarm that satisfies the requirements of 33 CFR 154.2100(e) when the oxygen concentration in the vapor collection line exceeds 60 percent by volume of the MOCC for the specific combination of cargo vapors and inert gas being processed, which may be determined by using Coast Guard guidance available at *http://homeport.uscg.mil;*

(3) Close the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a) and shut down any vapor-moving device when the oxygen concentration in the vapor collection line exceeds 70 percent by volume of the MOCC for the specific combination of cargo vapors and inert gas being processed, which may be determined by using Coast Guard guidance available at *http://homeport.uscg.mil;*

(4) Have a detonation arrester and a mechanism to prevent the backflow of flammable vapors installed between the combustion device and the inert gas injection point, if a combustion device is used to produce the inert gas; and

(5) Have an alarm value in paragraph (h)(2) of this section that is at least one percentage point less than the shutdown value in paragraph (h)(3) of this section. If the analyzers used to measure oxygen concentrations cannot accurately differentiate between the alarm value and the shutoff value, the alarm value must be lowered until the analyzers become operable.

(i) An enriching system must—

(1) Supply sufficient compatible hydrocarbon vapor to the vapor stream to make sure that the total flammable concentration downstream of the injection point is maintained either at or above 170 percent by volume of the upper flammable limit or above the upper flammable limit plus 10 percentage points, whichever is lower;

(2) Activate an alarm that satisfies the requirements of 33 CFR 154.2100(e) when the total flammable concentration in the vapor collection line either falls below 170 percent by volume of the upper flammable limit or below the upper flammable limit plus 10 percentage points, whichever is lower;

(3) Close the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a) and shut down any vapor-moving device when the total flammable concentration in the vapor collection line either falls below 150 percent by volume of the upper flammable limit or below the upper flammable limit plus 7.5 percentage points, whichever is lower; and

(4) Have an upper flammable limit listed in paragraphs (i)(1), (i)(2), and (i)(3) of this section which is either the cargo's upper flammable limit or the enriching gas's upper flammable limit, whichever is higher. Alternatively, the mixture's upper flammable limit, which may be determined by using methods found in Coast Guard guidance available at *http://homeport.uscg.mil,* may be used.

(j) Oxygen analyzers may be used instead of hydrocarbon analyzers in a VCS using an enriching system that receives cargo vapor only from a vessel with non-inerted cargo tanks, providing that the analyzers—

(1) Activate an alarm satisfying the requirements of 33 CFR 154.2100(e) when the oxygen concentration in the vapor collection line exceeds a level corresponding to either a total flammable concentration of 170 percent by volume of the upper flammable limit or the upper flammable limit plus 10 percentage points, whichever yields a higher oxygen concentration;

(2) Close the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a) and shut down any vapor-moving device when the oxygen concentration in the vapor collection line exceeds a level corresponding to either a total flammable concentration of 150 percent by volume of the upper flammable limit or the upper flammable limit plus 7.5 percentage points, whichever yields a higher oxygen concentration;

(3) Have an alarm value in paragraph (j)(1) of this section that is at least one percentage point less than the shutdown value in paragraph (j)(2) of this section. If the oxygen analyzers used to measure oxygen concentrations cannot accurately differentiate between the alarm value and the shutdown value, the alarm value must be lowered until the analyzers become operable; and

(4) Have an upper flammable limit listed in paragraphs (j)(1) and (j)(2) of this section which is either the cargo's upper flammable limit or the enriching gas's upper flammable limit, whichever is higher. Alternatively, the mixture's upper flammable limit, which may be determined by using methods found in Coast Guard guidance available at *http://homeport.uscg.mil,* may be used.

(k) An enriching system may be used in a VCS that receives inerted cargo vapor from a vessel if—

(1) Hydrocarbon analyzers are used to comply with paragraphs (i)(2) and (i)(3) of this section; or

(2) Oxygen analyzers are used, in which case the analyzers must—

(i) Activate an alarm meeting 33 CFR 154.2100(e) when the oxygen concentration in the vapor collection line exceeds 60 percent by volume of the MOCC for the specific combination of cargo vapors and gases; and

(ii) Close the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a) and shut down any vapor-moving device when the oxygen concentration exceeds 70 percent by volume of the MOCC for the specific combination of cargo vapors and gases; and

(3) The MOCC in paragraphs (k)(2)(i) and (k)(2)(ii) of this section is either the cargo's MOCC or the enriching gas's MOCC, whichever is lower. Alternatively, the mixture's MOCC, which may be determined using Coast Guard guidance available at *http://homeport.uscg.mil,* may be used.

(l) An air dilution system must—

(1) Supply a sufficient amount of additional air to the vapor stream to keep the total flammable concentration downstream of the injection point below

30 percent by volume of the lower flammable limit;

(2) Activate an alarm that satisfies the requirements of 33 CFR 154.2100(e) when the total flammable concentration in the vapor collection line exceeds 30 percent by volume of the lower flammable limit; and

(3) Close the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2100(a) and shut down any vapor-moving device when the total flammable concentration in the vapor collection line exceeds 50 percent by volume of the lower flammable limit.

(m) An enriching system may use a base loading method to control the amount of enriching gas in a vapor collection system if—

(1) The flow rate of enriching gas is determined by assuming the vapor entering the facility vapor connection consists of 100 percent air;

(2) Two independent devices are used to verify the correct enriching gas volumetric flow rate. One of the two devices must be a flow meter;

(3) One of the devices activates an alarm that satisfies the requirements of 33 CFR 154.2100(e) when the amount of enriching gas added results in a total flammable concentration in the vapor collection line either below 170 percent by volume of the upper flammable limit or below the upper flammable limit plus 10 percentage points, whichever is lower;

(4) The second device activates closure of the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a) and shuts down any vapor-moving device when the amount of enriching gas added results in a total flammable concentration in the vapor collection line either below 150 percent by volume of the upper flammable limit or below the upper flammable limit plus 7.5 percentage points, whichever is lower; and

(5) The upper flammable limit in paragraphs (m)(3) and (m)(4) of this section is either the cargo's upper flammable limit or the enriching gas's upper flammable limit, whichever is higher. Alternatively, the mixture's upper flammable limit, which may be determined using Coast Guard guidance available at *http://homeport.uscg.mil,* may be used.

(n) For controlling vapors of different cargoes at multiple berths while using enriching gas, the highest upper flammable limit or the lowest MOCC of the cargo or enriching gas, whichever is applicable, is used to determine the analyzer alarm and shutdown setpoints. Alternatively, the mixture's upper flammable limit or MOCC, which may be determined by using Coast Guard guidance available at *http://homeport.uscg.mil,* may be used.

(o) For controlling vapors of inert and non-inert cargoes at multiple berths while using enriching gas—

(1) The lowest MOCC of the cargo or enriching gas is used to determine the analyzer alarm and shutdown setpoints at all berths. Alternatively, the mixture's MOCC, which may be determined using Coast Guard guidance available at *http://homeport.uscg.mil,* may be used; or

(2) A base loading method meeting the requirements of paragraph (m) of this section is used for all berths.

§ 154.2108 Vapor-moving devices.

(a) Paragraphs (b) and (e) of this section apply only to facilities collecting vapors of flammable, combustible, or non-high flash point liquid cargoes.

(b) Each inlet and outlet to a vapor-moving device that handles vapor that has not been inerted, enriched, or diluted in accordance with 33 CFR 154.2107 must be fitted with a detonation arrester; however, the outlet detonation arrester may be omitted if the vapor-moving device is within 50 times the pipe's diameter of the detonation arrester required by 33 CFR 154.2109(a).

(c) If the vapor is handled by a reciprocating or screw-type compressor in the vapor collection system, the compressor must be installed with indicators and audible and visible alarms to warn against the following conditions:

(1) Excessive gas temperature at the compressor outlet;

(2) Excessive cooling water temperature;

(3) Excessive vibration;

(4) Low lube oil level;

(5) Low lube oil pressure; and

(6) Excessive shaft bearing temperature.

(d) If the vapor is handled by a liquid ring-type compressor in the vapor collection system, it must be installed with indicators and audible and visible alarms to warn against the following conditions:

(1) Low level of liquid sealing medium;

(2) Lack of flow of the liquid sealing medium;

(3) Excessive temperature of the liquid sealing medium;

(4) Low lube oil level;

(5) Low lube oil pressure, if pressurized lubricating system; and

(6) Excessive shaft bearing temperature.

(e) If the vapor is handled by a centrifugal compressor, fan, or lobe blower in the vapor collection system, construction of the blades or housing must be one of the following:

(1) Blades or housing of nonmetallic construction;

(2) Blades and housing of nonferrous material;

(3) Blades and housing of corrosion resistant steel;

(4) Ferrous blades and housing with one-half inch or more design tip clearance;

(5) Nonferrous blades and ferrous housing with one-half inch or more design tip clearance; or

(6) Blades of aluminum or magnesium alloy and a ferrous housing with a nonferrous insert sleeve at the periphery of the impeller.

§ 154.2109 Vapor recovery and vapor destruction units.

Paragraphs (a), (b), and (e) of this section apply only to facilities collecting vapors of flammable, combustible, or non-high flash point liquid cargoes.

(a) The inlet to a vapor recovery unit that receives vapor that has not been inerted, enriched, or diluted in accordance with 33 CFR 154.2107 must be fitted with a detonation arrester.

(b) The inlet to a vapor destruction unit must—

(1) Have a liquid seal that meets the requirements of paragraph (e) of this section, except as specified by paragraph (b)(3) of this section; and

(2) Have two quick-closing stop valves installed in the vapor line. One of them must be installed upstream of the detonation arrester required by paragraph (c)(2) of this section. The quick-closing stop valves must—

(i) Close within 30 seconds after detection of a shutdown condition by a control component required by this subpart for a vapor control system (VCS) with a vapor destruction unit;

(ii) Close automatically if the control signal is lost;

(iii) Have a local valve position indicator or be designed so that the valve position is readily determined from the valve handle or valve stem position; and

(iv) If the valve seat is fitted with resilient material, not allow appreciable leakage when the resilient material is damaged or destroyed; and

(3) Instead of a liquid seal as required by paragraph (b)(1) of this section, have the following:

(i) An anti-flashback burner approved by the Commandant and installed at each burner within the vapor destruction unit; and

(ii) A differential pressure sensor that activates the quick-closing stop valves as required by paragraph (b)(2) of this section upon sensing a reverse flow condition.

(c) A vapor destruction unit must—

(1) Not be within 30 meters (98.8 feet) of any tank vessel berth or mooring at the facility;

(2) Have a detonation arrester fitted in the inlet vapor line; and

(3) Activate an alarm that satisfies the requirements of 33 CFR 154.2100(e) and shut down when a flame is detected on the detonation arrester.

(d) When a vapor destruction unit shuts down or has a flame-out condition, the vapor destruction unit control system must—

(1) Activate and close the quick-closing stop valves required by paragraph (b)(2) of this section;

(2) Close the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a); and

(3) Automatically shut down any vapor-moving devices installed in the VCS.

(e) If a liquid seal is installed at the inlet to a vapor destruction unit, then—

(1) The liquid used in the liquid seal must be compatible with the vapors being controlled;

(2) For partially or totally soluble cargoes that can polymerize in solution, there must be an adequate amount of inhibitor in the liquid seal;

(3) The liquid seal must be compatible with the design of the VCS and must not contribute to the flammability of the vapor stream; and

(4) The liquid seal must have a low-level alarm and a low-low level shutdown.

§ 154.2110 Vapor balancing requirements.

Paragraphs (a)(2), (a)(4), (b), and (c) of this section apply only to facilities transferring vapors of flammable, combustible, or non-high flash point liquid cargoes.

(a) A vapor control system (VCS) that uses a vapor balancing system in which cargo vapor is transferred from a vessel cargo tank or facility storage tank through the facility vapor collection system to a facility storage tank or vessel cargo tank must—

(1) Have facility storage tank high-level alarm systems and facility storage tank overfill control systems arranged to prevent the cargo from entering the vapor return line;

(2) Have a detonation arrester located within the storage tank containment area and a detonation arrester located as close as practicable to the facility vapor connection. The total pipe length between the detonation arrester and the facility vapor connection must not exceed 18 meters (59.1 feet);

(3) Meet the overpressure and over-vacuum protection requirements of 33 CFR 154.2103; and

(4) For inert cargo systems, have at least one oxygen analyzer in the vapor line that activates an alarm that satisfies the requirements of 33 CFR 154.2100(e) when the oxygen concentration in the vapor line exceeds 60 percent by volume of the minimum oxygen concentration for combustion (MOCC) for the specific combination of cargo vapor and inert gas, which may be determined using Coast Guard guidance available at *http://homeport.uscg.mil.*

(b) A vapor balancing system, while in operation to transfer vapor to or from a vessel cargo tank and connected by way of the facility storage tank vent to a facility's main VCS with a vapor destruction unit, must have—

(1) A mechanism to prevent backflow of vapor from the facility's main VCS to the marine vapor line; and

(2) Two fail-safe, quick-closing valves installed in the marine vapor line at the facility storage tank that automatically close when—

(i) Flame is detected on the facility storage tank; or

(ii) The temperature of the facility storage tank's vapor space reaches 177 °C (350 °F) or 70 percent of the vapor's auto-ignition temperature in degrees Celsius, whichever is lower.

(c) Transferring vapor from a non-inerted facility storage tank to a vessel cargo tank that is required to be inerted in accordance with 46 CFR 32.53, 153.500, or Table 151.05, is prohibited.

(d) A vapor balancing system that transfers vapor to a vessel cargo tank must not use a vapor-moving device to assist vapor transfer or inject inerting, enriching, or diluting gas into the vapor line without approval from the Commandant.

§ 154.2111 Vapor control system connected to a facility's main vapor control system.

(a) When a marine vapor control system (VCS) is connected to a facility's main VCS serving other plant processing areas that are not related to tank vessel operations, the marine vapor line, before the point where the marine VCS connects to the facility's main VCS, must be fitted with—

(1) A detonation arrester, unless both the marine VCS and the facility's main VCS only control vapors of cargoes that are non-flammable, non-combustible, or that have high flashpoints;

(2) Two fail-safe, quick closing valves, one on each side of any detonation arrester required by paragraph (a)(1) of this section, which automatically close when a flame is detected on the detonation arrester or a VCS shutdown condition occurs, or when the facility's marine VCS is not in operation; and

(3) A mechanism to prevent backflow of vapors to the marine vapor line.

(b) Vapors from plant processing areas unrelated to tank vessel operations must not enter the vapor line of a marine VCS before the devices required by paragraph (a) of this section.

(c) A facility that wants to connect a facility vapor line, which collects vapor from other plant processing areas that are not related to tank vessel operations, to a marine VCS, must receive approval in writing from the Commandant.

§ 154.2112 Vapors with potential to polymerize or freeze—Special requirements.

(a) A vapor control system (VCS) that controls vapors with the potential to polymerize at a normal ambient condition must—

(1) Be designed to prevent condensation of monomer vapor. Methods such as heat tracing and insulation are permitted if they do not result in an increased risk of polymerization;

(2) Be designed so that polymerization can be detected. Any points suspected of being sites for potential polymerization buildup must be equipped with inspection openings; and

(3) Include devices to measure the pressure drop across detonation arresters due to polymerization. Any device used for this purpose, including differential pressure monitors, must not have the capability of transmitting a detonation across the detonation arrester.

(b) A VCS that controls cargo vapors that potentially freeze at ambient temperature must have a design that prevents the freezing of vapors or condensate at ambient temperature or that detects and removes the liquid condensate and solids to prevent accumulation.

§ 154.2113 Alkylene oxides—Special requirements.

A vapor control system (VCS) that controls vapors of an alkylene oxide must comply with the following:

(a) The VCS's equipment, hoses, piping, and all piping components, including valves, flanges, and fittings, which must be of a type and constructed out of materials suitable for use with alkylene oxide;

(b) The VCS used for collecting an alkylene oxide vapor must not be used for collecting other vapors and must be separated from any other VCS, except as specified by paragraph (c) of this section; and

(c) The VCS must be adequately cleaned in accordance with 33 CFR 154.2150(p) and recertified by a certifying entity if—

(1) The VCS is used to control other vapors; or

(2) The VCS is returned to alkylene oxide service after being used to control other cargo vapors.

Transfer Facilities—Operations

§ 154.2150 General requirements.

(a) No transfer operation using a vapor control system (VCS) may be conducted unless the facility operator has a copy of the facility operations manual, with the VCS addendum, marked by the local Coast Guard Captain of the Port (COTP) as required by 33 CFR 154.325(d).

(b) Personnel in charge of a facility must ensure that—

(1) The facility controls vapor only from cargoes that are properly authorized for vapor control in the facility's certification letter;

(2) The facility transfers vapor only to or from a vessel that has its certificate of inspection or certificate of compliance endorsed in accordance with 46 CFR 39.1013 or 46 CFR 39.1015 for each cargo intended for transfer; and

(3) If the vessel tanks to be vapor controlled contain vapor from previous cargo transfers other than the cargo or cargoes intended for transfer, the facility and vessel must be authorized to control the additional vapor from the previous cargo transfers. Any oxygen or hydrocarbon analyzer alarm and shutdown setpoints must be set to accommodate all of the cargo vapors.

(c) The facility personnel in charge must ensure that safety system testing is conducted as follows:

(1) Pressure sensors, alarms, and automatic shutdown systems required by 33 CFR 154.2103, 154.2107, and 154.2110, except as exempted by paragraph (c)(2) or (c)(3) of this section, must be tested by applying the test pressure at the sensors not more than 24 hours before each transfer;

(2) The pressure sensors required by 33 CFR 154.2103 may meet the requirements of the test program contained in 33 CFR 154.2180 and 33 CFR 154.2181 instead of the current program, which mandates tests within 24 hours before each transfer as required by paragraph (c)(1) of this section;

(3) Visible and audible alarm indicators must be tested not more than 24 hours before each transfer;

(4) The analyzers required by 33 CFR 154.2105, 154.2107, and 154.2110, except as exempted by paragraph (c)(5) of this section, must be checked for calibration response by using a span gas not more than 24 hours before each transfer;

(5) The analyzers required by 33 CFR 154.2105, 154.2107, and 154.2110 may be checked for calibration response by use of a span gas as defined by the test program contained in 33 CFR 154.2180 and 33 CFR 154.2181, and comply with the minimum requirements as defined in 33 CFR 154.2180 and 33 CFR 154.2181, instead of the test required by paragraph (c)(4) of this section; and

(6) The vacuum and pressure relief valves required by 33 CFR 154.2103 must be checked not more than 24 hours before each transfer to make sure they are operating without constraint and to ensure that any required flame screens or flame arresters are not damaged.

(d) The proper position of all valves in the vapor line between the vessel's tanks and the facility vapor collection system must be verified before the start of the transfer operation.

(e) A tank barge overfill control system that meets the requirements of 46 CFR 39.2009(a)(2) must—

(1) Not be connected to an overfill sensor circuit that exceeds the system's rated inductance and capacitance; and

(2) Be tested for proper operation after connection is made with the vessel by simulating liquid high level and overfill at each tank.

(f) When receiving vapor from a vessel with cargo tanks that are required to be inerted in accordance with 46 CFR 32.53, 46 CFR 153.500, or 46 CFR Table 151.05, the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a) must not be opened until the pressure at the facility vapor connection exceeds 0.2 pounds per square inch gauge (psig).

(g) The initial cargo transfer rate must not exceed the rate agreed upon at the pre-transfer conference and 46 CFR 39.3001(g).

(h) The cargo transfer rate must not exceed the maximum allowable transfer rate as determined by the lesser of the following:

(1) A transfer rate corresponding to the maximum vapor processing rate for the VCS, as specified in the facility operations manual; or

(2) The vessel's maximum transfer rate in accordance with 46 CFR 39.3001(d).

(i) While transferring cargo to a vessel connected to a VCS, compressed air or gas may be used to clear cargo hoses and loading arms, but must not be used to clear cargo lines unless a cargo line clearance (pigging) system that meets 33 CFR 154.2104 is provided.

(j) If a pigging system is used to clear cargo lines to the tank vessel while the vessel is connected to the facility VCS, the following operational requirements apply:

(1) The VCS must be in operation, with all of the high-pressure alarms and shutdowns required by 33 CFR 154.2103 active, before and during line-clearing operations;

(2) Personnel performing the line-clearing operation must be adequately trained on the specific line-clearing system being used. Accurate written procedures that address event sequence, equipment, safety precautions, and overpressurization hazards must be made available to all personnel involved in the line-clearing operations;

(3) Line-clearing procedures must be reviewed by both the vessel and facility personnel in charge as part of the pre-transfer conference. Topics of discussion during the pre-transfer conference must include, but need not be limited to—

(i) Event sequence;

(ii) Equipment;

(iii) Safety precautions;

(iv) Overpressurization hazards;

(v) Personnel roles;

(vi) Gas volumetric flow rates;

(vii) Gas pressures;

(viii) Volume of residual cargo in the line;

(ix) Amount of ullage space that is available for line displacement and connections;

(x) Valve alignment;

(xi) Units of measure;

(xii) Terminology; and

(xiii) Anticipated duration of the evolution;

(4) The pig must be inspected to ensure that it is of sufficient durability and condition; be of an appropriate size, type, and construction for the intended operation; and be inspected for defects before each use and replaced if necessary;

(5) Personnel performing line-clearing operations must monitor pig movement at all times. The facility and vessel manifold valves must be closed immediately after the pig reaches the pig-receiving device; and

(6) If the pigging system contains pressure-sensing, relieving, or alarming components in addition to those required by 33 CFR 154.2103, the components must be periodically tested in accordance with paragraphs (c) and (q) of this section.

(k) If one or more analyzers required by 33 CFR 154.2107 and 154.2110 become inoperable during a transfer operation, the operation may continue, provided that at least one analyzer remains operational; however, no further transfer operations may start until all inoperable analyzers are replaced or repaired.

(l) Whenever a condition results in a shutdown of the VCS, the emergency shutdown system required by 33 CFR 154.550 must be automatically activated

to terminate cargo loading into tanks which are being vapor controlled.

(m) If it is suspected that a flare in the VCS has had a flashback, or if a flame is detected on a detonation arrester required by 33 CFR 154.2109(c)(2), the transfer operation must stop and cannot restart until that detonation arrester and any quick-closing stop valves downstream of the detonation arrester are inspected and found to be in satisfactory condition.

(n) Before each transfer operation, the freezing point of each cargo must be determined. If there is a possibility that the ambient air temperature during transfer operations will be at or below the freezing point of the cargo, adequate precautions must be taken to prevent freezing of vapor or condensate, or to detect and remove the frozen liquid and condensation to prevent accumulation.

(o) Before each transfer operation, the cargo vapor must be evaluated to determine its potential to polymerize, and adequate precautions must be taken to prevent and detect polymerization of the cargo vapors.

(p) Mixing of incompatible vapors is prohibited. The VCS piping, equipment, hoses, valves, and arresters must be purged between vapor control operations that involve incompatible chemical vapors in accordance with the following:

(1) Chemical compatibility must be determined by using the procedures contained in 46 CFR part 150;

(2) Purge gas must be an inert gas, air, or enriching gas, and must be adequate to reduce the level of residual vapor to a level at which reaction with the subsequent vapor cannot occur; and

(3) The required duration of purge time must be calculated and approved by the certifying entity during the certification or recertification.

(q) VCS equipment and instrumentation must be tested as required by 33 CFR 156.170(g), with a representative of the COTP invited to witness these tests. The test procedure and a checklist must be approved by the certifying entity during the initial certification of the system and incorporated into the facility operations manual.

(r) A transfer operation that includes collection of vapor emitted to or from a vessel's cargo tanks must meet the transfer requirements of 33 CFR 156.120(aa), and a declaration of inspection meeting the requirements of 33 CFR 156.150 must be completed before each transfer.

Alternative Analyzer and Pressure Sensor Reliability Testing

§ 154.2180 Alternative testing program—Generally.

(a) As an alternative to complying with the vapor control system (VCS) analyzer and pressure sensor safety testing requirements provided by 33 CFR 154.2150(c) and 33 CFR 154.2250(c), the facility person in charge may administer a reliability assurance test program in accordance with this section and 33 CFR 154.2181.

(b) As used in this section:

(1) Calibration drift or *CD* means the difference in the analyzer output readings from the established reference value after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place;

(2) Calibration error or *CE* means the difference between the gas concentration exhibited by the gas analyzer and the known concentration of the cylinder gas;

(3) Response time or *RT* means the time interval between the start of a step change in the system input (*e.g.,* change of calibration gas) and the time when the data recording system displays 95 percent of the final stable value; and

(4) Sampling system bias or *SSB* means the difference between the gas concentrations indicated by the measurement system when a known cylinder gas is introduced at the outlet of the sampling probe and when the same gas is introduced directly to the analyzer.

(c) All analyzers used in a VCS must be safety system function tested and tested for CE, CD, RT, and SSB, in accordance with 33 CFR 154.2181.

(d) All pressure sensors/switches used in a VCS must be safety system function tested and tested for CE and CD, in accordance with 33 CFR 154.2181.

(e) The facility person in charge must ensure the following:

(1) Calibration of instrumentation using standard procedures provided by the manufacturer or service provider;

(2) Monitoring of all interlocks, alarms, and recording devices for proper operation while instrumentation is being calibrated;

(3) Use of a certified 2 percent or better gas standard to calibrate the analyzers; and

(4) Use of a certified secondary standard to calibrate the pressure sensors/switches.

(f) Upon failing any test under 33 CFR 154.2181, the facility person in charge must ensure that all monthly and quarterly tests, including CE, CD, RT, and SSB, are conducted; and until all quarterly tests are completed, the person in charge must ensure that the vapor control alarms and automatic shutdown system are tested no more than 24 hours prior to any transfer or tank barge cleaning operation.

(g) Analyzers required by 33 CFR 154.2105(a) and (j) and 154.2107(d) and (e) must be checked for calibration using a span gas.

(h) The facility operator must maintain and make available upon the request of the Commandant and the certifying entity that certifies the VCS the following reliability assurance test program documents for two years:

(1) All test procedures;

(2) The dates of all tests, type of tests made, and who conducted the tests;

(3) Results of the tests, including the "as found" and "as left" conditions; and

(4) A record of the date and time of repairs made.

§ 154.2181 Alternative testing program—Test requirements.

(a) The safety system function test required by 33 CFR 154.2180 must be performed once every two weeks and test for the proper operation and interaction of the analyzer or pressure sensor/switch with shutdown interlocks, and audible and visible alarm devices.

(b) The calibration error (CE) test required by 33 CFR 154.2180 must be performed once every month and documented as shown in Forms 154.2181(b)(2) and 154.2181(b)(3) of this section, to document the accuracy and linearity of the monitoring equipment for the entire measurement range.

(1) The CE test must expose the measurement system, including all monitoring components (*e.g.,* sample lines, filters, scrubbers, conditioners, and as much of the probe as practicable), to the calibration gases, introduced through an injection port located so as to allow a check of the entire measurement system when calibration gases are introduced;

(2) The CE test must check the calibrated range of each analyzer using a lower (zero) and upper (span) reference gas standard. Three measurements must be taken against each standard and recorded as shown in Form 154.2181(b)(2) of this section, with the average of the three values in each case then used to calculate the CE according to this equation (where CE = percentage calibration error based upon span of the instrument, R = reference value of zero or high-level calibration gas introduced into the monitoring system, A = actual monitoring system response to the calibration gas, and S = span of the instrument):

$$CE = \frac{|R - A|}{S} \times 100$$

FORM 154.2181(b)(2)—CALIBRATION ERROR DETERMINATION

	Calibration Value	Monitor Response	Difference	
			Zero	Span
1—Zero				
1—Span				
2—Zero				
2—Span				
3—Zero				
3—Span				
Mean Difference =				
Calibration Error =			%	%

(3) The CE test must check each pressure sensor/switch for upscale (activate) and downscale (deactivate) hysteresis around the sensor/switch set pressure. The calibration error must be calculated and recorded as shown in Form 154.2181(b)(3) of this section. Test the pressure sensor/switch three times and record the desired setting and the as-found set pressure. Calculate and record the difference of the two settings. Calculate the error percentage using this equation (where CE = percentage calibration error based upon span of the instrument, R = reference setting of the instrument, A = actual response as recorded on the test instrument, and S = span of the instrument):

$$CE = \frac{|R - A|}{S} \times 100$$

Record sensor "as-left" setting only if an adjustment is made.

FORM 154.2181(b)(3)—SWITCH CALIBRATION ERROR

QUALITY ASSURANCE DATA SHEET
SWITCH DATA RECORD

DATE. _____ F.I. NO. _____
_____

MANUFACTURER _____

MODEL NO._____ SERIAL NO. _____

SERVICE _____
_____

CR = CLOSES ON RISE OR = OPENS ON RISE
CF = CLOSES ON FALL OF = OPENS ON FALL

TEST EQUIPMENT	MODEL NO.	SERIAL NO.

FUNCTION	DESIRED	AS FOUND	DIFFERENCE	ERROR %	AS LEFT
Test #1 Set					
Reset					
Test #2 Set					
Reset					
Test #3 Set					
Reset					

SPEC NO. _____ TEST PERFORMED BY: _____

DATE: _____ ACCEPTED BY: _____

REMARKS:
_____
_____
_____

(c) The calibration drift (CD) test required by 33 CFR 154.2180 must be performed once every quarter and documented as shown in Form 154.2181(c)(3) of this section, to verify the ability of the instrument to conform to the established calibration.

(1) The CD measurement must be conducted once daily for seven consecutive days without making any adjustments to the instruments.

(2) Conduct the CD test at zero level (between 0 and 20 percent of the instrument span) and at high level (between 75 and 95 percent of the instrument span).

(3) Calculate and record the CD for seven consecutive days using the equations in paragraphs (b)(2) and (b)(3) of this section and Form 154.2181(c)(3) of this section.

FORM 154.2181(c)(3)—CALIBRATION DRIFT DETERMINATION

Day	Day/Time	Reference Value (RV)	Monitor Value	Difference (Error)	Percent of RV (Drift)
Low-Level:					

FORM 154.2181(c)(3)—CALIBRATION DRIFT DETERMINATION—Continued

Day	Day/Time	Reference Value (RV)	Monitor Value	Difference (Error)	Percent of RV (Drift)
High-Level:					

(d) The response time (RT) test required by 33 CFR 154.2180 must be performed once every quarter and documented as shown in Form 154.2181(d) of this section, to determine the RT which is the largest average response time in the upscale or downscale direction.

(1) For systems that normally operate below 20 percent of calibrated range, only a span (upscale) test is required.

(2) Record the span (upscale) value, zero (downscale) cylinder gas value, and stable, initial process-measured variable value.

(3) Determine the step change, which is equal to the average difference between the initial process-measured variable value and the average final stable cylinder gas-measured value.

(4) To determine both upscale and downscale step change intervals—

(i) Inject span (or zero) cylinder gas into the sample system as close to the sample probe as possible;

(ii) Allow the analyzer to stabilize and record the stabilized value. A stable reading is achieved when the concentration reading deviates less than 6 percent from the measured average concentration in 6 minutes or if it deviates less than 2 percent of the monitor's span value in 1 minute;

(iii) Stop the span (or zero) gas flow, allow the monitor to stabilize back to the measured variable value, and record the stabilized value; and

(iv) Repeat this procedure a total of three times and subtract the average final monitor reading from the average starting monitor value to determine the average upscale (or downscale) step change.

(5) Determine the response time, which is equal to the elapsed time at which 95 percent of the step change occurred.

(i) To find this value, take 5 percent of the average step change value and subtract the result from the cylinder gas analyzed value as shown in the following equation:

$$95\%\ \text{step change value} = \text{cylinder gas value} - (0.05 \times \text{avg. step change})$$

(ii) Inject span (or zero) cylinder gas into the sample system as close to the sample probe as possible, and measure the time it takes to reach the 95 percent step change value.

(iii) Repeat the previous step (paragraph (d)(5)(ii) of this section) a total of three times each with span and zero cylinder gas to determine average upscale and downscale response times.

(iv) Compare the response times achieved for the upscale and downscale tests. The longer of these two times equals the response time for the analyzer.

FORM 154.2181(d)—RESPONSE TIME

```
   Date of test _____
   Component/system ID#: _____
   Analyzer type _____
   Serial Number _____
   High-level gas concentration: ___ ppm / %
   Zero-level gas concentration: ___ ppm / %
   Analyzer span setting: ___ ppm / %
   Upscale:
   Stable starting monitor value: ____, ____, ____;
Avg. ____ ppm / %
   Stable ending monitor reading: ____, ____, ____;
Avg. ____ ppm / %
Step change interval: ____ ppm; 95%
Step change value: ____ ppm / %
   Elapsed time: ___, ____, ____; Avg. _____ seconds
   Downscale:
   Stable starting monitor value: ____, ____, ____;
Avg. ____ ppm / %
   Stable ending monitor reading: ____, ____, ____;
Avg. ____ ppm / %
Step change interval: ____ ppm; 95%
Step change value: ____ ppm / %
   Elapsed time: ____, ____, ____;
Avg. ____ seconds

   System response time = ___ seconds
```

(e) The sample system bias (SSB) test required by 33 CFR 154.2180 must be performed once every quarter and documented, to establish that the system has no additional influence on the measurement being made by the analyzer.

(1) Conduct a close CE test in accordance with paragraph (b) of this section, by injecting calibration gas as close as possible to the analyzer, eliminating as much of the sample system components as possible, while still simulating the normal source operating conditions.

(2) If system integrity is maintained, and it has not become contaminated, the difference between the close and standard CE tests should be the same.

(f) For CE and CD tests, analyzers and pressure sensors must meet the following minimum compliance requirements:

(1) Oxygen analyzers must not deviate from the reference value of the zero- or high-level calibration gas by more than 0.5 percent of full scale;

(2) Total hydrocarbon analyzers must not deviate from the reference value of the zero- or high-level calibration gas by more than 1 percent of full scale; and

(3) Pressure sensors/switches must not deviate from the reference value of the zero- or high-level calibration gas by more than 1.5 percent of full range.

(g) For RT tests, each oxygen or hydrocarbon analyzer must respond, in less than 1 minute, to 95 percent of the final stable value of a test span gas.

(h) For SSB tests, the analyzer system bias must be less than 5 percent of the average difference between the standard CE test and the close CE test, divided by the individual analyzer span.

Tank Barge Cleaning Facilities—VCS Design and Installation

§ 154.2200 Applicable transfer facility design and installation requirements.

A tank barge cleaning facility's (TBCF's) vapor control system (VCS) must meet the following design and installation requirements of this subpart for a transfer facility's VCS:

(a) 33 CFR 154.2100(b), (c), (f), (g), (i), (j), and (k): general design and installation requirements;

(b) 33 CFR 154.2106: detonation arrester installation;

(c) 33 CFR 154.2107: inerting, enriching, and diluting systems;

(d) 33 CFR 154.2108: vapor-moving devices;

(e) 33 CFR 154.2109: vapor recovery and vapor destruction units;

(f) 33 CFR 154.2111: VCS connected to a facility's main VCS;

(g) 33 CFR 154.2112: special requirements for vapors with the potential to polymerize or freeze; and

(h) 33 CFR 154.2113: special requirements for alkylene oxides.

§ 154.2201 Vapor control system—General requirements.

(a) Vapor control system (VCS) design and installation must eliminate potential overpressure and vacuum hazards, sources of ignition, and mechanical damage to the maximum practicable extent. Each remaining hazard source that is not eliminated must be specifically addressed in the protection system design and system operational requirements.

(b) Any pressure, flow, or concentration indication required by this part must provide a remote indicator on the facility where the VCS is controlled, unless the local indicator is clearly visible and readable from the operator's normal position at the VCS control station.

(c) Any condition requiring an alarm as specified in this part must activate an audible and visible alarm where the VCS is controlled.

(d) A mechanism must be developed and used to eliminate any liquid from the VCS.

(e) A liquid knockout vessel must be installed between the facility vapor connection and any vapor-moving device in systems that have the potential for two-phase (vapor/liquid) flow from the barge or the potential for liquid condensate to form as a result of the enrichment process. The liquid knockout vessel must have—

(1) A means to indicate the level of liquid in the device;

(2) A high liquid level sensor that activates an alarm that satisfies the requirements of 33 CFR 154.2100(e); and

(3) A high-high liquid level sensor that closes the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a) and shuts down any vapor-moving device before liquid is carried over to the vapor-moving device. One sensor with two stages may be used to meet this requirement as well as paragraph (e)(2) of this section.

§ 154.2202 Vapor line connections.

(a) 33 CFR 154.2101(a), (e), and (g) apply to a tank barge cleaning facility's (TBCF's) vapor control system (VCS).

(b) The remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a) must be located upstream of the liquid knockout vessel required by 33 CFR 154.2201(e).

(c) A fluid displacement system must have a remotely operated shutoff valve installed in the fluid injection supply line between the point where the inert gas or other medium is generated and the fluid injection connection. The valve must comply with 33 CFR 154.2101(a)(1) through (a)(6).

(d) Each hose used for transferring vapors must—

(1) Have a design burst pressure of at least 25 pounds per square inch gauge (psig);

(2) Have a maximum allowable working pressure (MAWP) no less than 5 psig;

(3) Be capable of withstanding at least the maximum vacuum rating of the vapor-moving device without collapsing or constricting;

(4) Be electrically continuous, with a maximum resistance of 10,000 ohms;

(5) Have flanges with a bolthole arrangement complying with the requirements for Class 150 ANSI B16.5 flanges (incorporated by reference, *see* 33 CFR 154.106);

(6) Be abrasion and kinking resistant; and

(7) Be compatible with vapors being transferred.

(e) Fixed vapor collection arms must meet the requirements of paragraph (d) of this section.

§ 154.2203 Facility requirements for barge vapor overpressure and vacuum protection.

In this section, the requirements of having a flame arrester or a flame screen at the opening of a pressure relief valve or a vacuum relief valve apply only to facilities collecting vapors of flammable, combustible, or non-high flash point liquid cargoes.

(a) A facility vapor collection system must have a capacity for collecting cleaning facility vapors at a rate of no less than 1.1 times the facility's maximum allowable gas-freeing rate, plus any inerting, diluting, or enriching gas that may be added to the system.

(b) A facility vapor control system (VCS) must be designed to prevent the pressure in a vessel's cargo tanks from going below 80 percent of the highest setting of any of the barge's vacuum relief valves or exceeding 80 percent of the lowest setting of any of the barge's pressure relief valves. The VCS must be capable of maintaining the pressure in the barge's cargo tanks within this range at any gas-freeing rate less than or equal to the maximum gas-freeing rate determined by the requirements in 46 CFR 39.6007(c).

(c) A fluid displacement system must provide a pressure-sensing device that activates an alarm that satisfies the requirements of 33 CFR 154.2100(e) when the pressure at the fluid injection connection exceeds either the pressure corresponding to the upper pressure determined in paragraph (b) of this section or a lower pressure agreed upon by the facility and barge persons in charge. The pressure-sensing device must be located in the fluid displacement system's piping downstream of any devices that could potentially isolate the barge's vapor collection system from the pressure-sensing device. The pressure measured by the sensing device must be corrected for pressure drops across any barge piping, hoses, or arms that are used to inject the fluid.

(d) A fluid displacement system must provide a pressure-sensing device that is independent of the device required by paragraph (c) of this section. This pressure-sensing device must activate the fluid displacement system emergency shutdown and close the remotely operated cargo vapor shutoff valve required by 33 CFR 154.2101(a). It must also close the remotely operated shutoff valve required by 33 CFR 154.2202(c) when the pressure at the fluid injection connection reaches 90 percent of the lowest setting of any pressure relief valve on the barge. The pressure-sensing device must be located in the fluid displacement system's piping downstream of any device that could potentially isolate the barge's VCS from the pressure-sensing device. The pressure measured by the sensing device must be corrected for pressure drops across any barge piping, hoses, or arms that are used to inject the fluid.

(e) If a vapor-moving device capable of drawing more than 0.5 pounds per square inch gauge (psig) vacuum is used to draw vapor, air, inert gas, or other medium from the barge, a vacuum relief valve must be installed on the facility's fixed vapor collection system piping between the facility vapor connection and the vapor-moving device. The vacuum relief valve must—

(1) Relieve at a pressure such that the pressure at the facility vapor connection is maintained at or above 14.2 pounds per square inch absolute (psia) (-0.5 psig);

(2) Have a relieving capacity equal to or greater than the maximum capacity of the vapor-moving device;

(3) Have a flame arrester or flame screen fitted at the vacuum relief opening;

(4) Have been tested for relieving capacity in accordance with paragraph 1.5.1.3 of API 2000 (incorporated by reference, *see* 33 CFR 154.106), with a flame arrester or flame screen fitted; and

(5) Be constructed of materials compatible with the vapors being gas-freed.

(f) The vacuum relief valve requirements of paragraph (e) of this section may include a valve to isolate it from the facility vapor collection piping, provided—

(1) The isolation valve must be interlocked with any vapor-moving device such that the vapor-moving device cannot activate unless the isolation valve is in the full open position (*i.e.,* the vacuum relief valve is not isolated); and

(2) The isolation valve can only be closed after the facility person in charge has acknowledged that the hatch opening required by 33 CFR 154.2250(i) is open and secured.

(g) If a vapor-moving device capable of drawing more than 0.5 psig vacuum is used to draw vapor, air, inert gas, or other medium from the barge, the facility must install portable, intrinsically safe, pressure-sensing devices on any cargo tank at the connection required by 46 CFR 39.6003(b) before any cleaning operation begins on the tank. A pressure-sensing device must be provided that—

(1) Activates an alarm that satisfies 33 CFR 154.2100(e) when the pressure in the cargo tank being cleaned falls below 80 percent of the highest setting of any of the barge's vacuum relief valves, or a higher pressure agreed upon by the facility and barge persons in charge; and

(2) Activates the emergency shutdown system for the vapor-moving device and closes the remotely operated cargo vapor shutoff valve described in 33 CFR 154.2101(a) when the pressure in the cargo tank being cleaned falls below 90 percent of the highest setting of any of the barge's vacuum relief valves, or a higher pressure agreed upon by the facility and barge persons in charge. This pressure-sensing device must be independent of the device used to activate an alarm required by paragraph (g)(1) of this section.

(h) The pressure-sensing devices required by paragraph (g) of this section must—

(1) Have suitable means, such as approved intrinsic safety barriers that are able to accept passive devices, so that the under-pressure alarm circuits of the barge side of the under-pressure control system, including cabling, normally closed switches, and pin and sleeve connectors, are intrinsically safe;

(2) Be connected to the under-pressure alarm system by a four-wire, 16-ampere shielded flexible cable; and

(3) Have cable shielding grounded to the under-pressure alarm system.

(i) A pressure-indicating device must be provided within 6 meters (19.7 feet) of the facility vapor connection which displays the pressure in the vapor collection line upstream of any isolation valve and any devices, such as strainers, that could cause a blockage in the vapor line.

(j) A fluid displacement system must include a pressure-indicating device that displays the pressure in the fluid displacement system injection line. This device must be within 6 meters (19.7 feet) of the fluid injection connection.

(k) If a fluid displacement system used to inject inert gas or another medium into the cargo tank of a barge being gas-freed is capable of producing a pressure greater than 2 psig, a pressure relief valve must be installed in the fluid displacement system injection line between the fluid injection source and the fluid injection connection that—

(1) Relieves at a predetermined pressure such that the pressure in the fluid displacement system at the fluid injection connection does not exceed 1.5 psig;

(2) Has a relieving capacity equal to or greater than the maximum volumetric flow capacity of the fluid displacement system;

(3) Has a flame screen or flame arrester fitted at the relief opening; and

(4) Has been tested for relieving capacity in accordance with paragraph 1.5.1.3 of API 2000, when fitted with a flame screen or flame arrester.

(l) When using the fluid displacement system, if the pressure in the facility's fixed vapor collection system can exceed 2 psig during a malfunction in an inerting, enriching, or diluting system, a pressure relief valve must—

(1) Be installed between the point where inerting, enriching, or diluting gas is added to the facility's fixed vapor collection system piping and the facility vapor connection;

(2) Relieve at a predetermined pressure such that the pressure at the facility vapor connection does not exceed 1.5 psig;

(3) Have a relieving capacity equal to or greater than the maximum capacity of the facility's inerting, enriching, or diluting gas source;

(4) Have a flame screen or flame arrester fitted at the relief opening;

(5) Have been tested for relieving capacity in accordance with paragraph 1.5.1.3 of API 2000, when fitted with a flame screen or flame arrester; and

(6) Be constructed of materials compatible with the vapors being gas-freed.

(m) For fluid displacement systems, the fluid injection connection must be electrically insulated from the fluid injection source in accordance with OCIMF ISGOTT section 17.5 (incorporated by reference, *see* 33 CFR 154.106).

(n) If the pressure relief valve is not designed with a minimum vapor discharge velocity of 30 meters (98.4 feet) per second, the relieving capacity test required by paragraphs (k)(4) and (l)(5) of this section must be carried out with a flame screen or flame arrester fitted at the discharge opening.

(o) A pressure indicating device must be provided by the facility for installation at the connection required by 46 CFR 39.6003(b).

§ 154.2204 Fire, explosion, and detonation protection.

This section applies to tank barge cleaning facilities (TBCFs) collecting vapors of flammable, combustible, or non-high flash point liquid cargoes.

(a) A vapor control system (VCS) with a single facility vapor connection that processes vapor with a vapor recovery unit must—

(1) Have a detonation arrester located as close as practicable to the facility vapor connection. The total pipe length between the detonation arrester and the facility vapor connection must not exceed 18 meters (59.1 feet); or

(2) Have an inerting, enriching, or diluting system that meets the requirements of 33 CFR 154.2107.

(b) A VCS with a single facility vapor connection that processes vapor with a vapor destruction unit must—

(1) Have a detonation arrester located as close as practicable to the facility vapor connection. The total pipe length between the detonation arrester and the facility vapor connection must not exceed 18 meters (59.1 feet); and

(2) Have an inerting, enriching, or diluting system that meets the requirements of 33 CFR 154.2107.

(c) A VCS with multiple facility vapor connections that processes vapor with a vapor recovery unit must have a detonation arrester located as close as practicable to each facility vapor connection. The total pipe length between the detonation arrester and each facility vapor connection must not exceed 18 meters (59.1 feet).

(d) A VCS with multiple facility vapor connections that processes vapor with a vapor destruction unit must—

(1) Have a detonation arrester located as close as practicable to each facility vapor connection. The total pipe length between the detonation arrester and each facility vapor connection must not exceed 18 meters (59.1 feet); and

(2) Have an inerting, enriching, or diluting system that meets the requirements of 33 CFR 154.2107.

(e) 33 CFR 154.2105(j) applies to a TBCF's VCS.

Tank Barge Cleaning Facilities—Operations

§ 154.2250 General requirements.

(a) No tank barge cleaning operation using a vapor control system (VCS) may be conducted unless the facility operator has a copy of the facility operations manual, with the VCS addendum, marked by the local Coast Guard Captain of the Port (COTP) as required by 33 CFR 154.325(d).

(b) The facility person in charge must ensure that a facility can receive vapors only from a barge with a VCS that has been approved by the Coast Guard Marine Safety Center as meeting the requirements of 46 CFR 39.6000.

(c) The facility person in charge must ensure that safety system tests are conducted as follows:

(1) Pressure sensors, alarms, and automatic shutdown systems required by 33 CFR 154.2203, except as exempted by paragraph (c)(2) or (c)(3) of this section, must be tested by applying the test pressure at the sensors not more than 24 hours before each cleaning operation;

(2) The pressure sensors required by 33 CFR 154.2203 may meet the test program in accordance with 33 CFR 154.2180 and 33 CFR 154.2181 instead of the test within 24 hours before each cleaning operation as required by paragraph (c)(1) of this section;

(3) Visible and audible alarm indicators must be tested not more than 24 hours before each cleaning operation;

(4) The analyzers required by 33 CFR 154.2105(j) and 154.2107(d) and (e), except as exempted by paragraph (c)(5) of this section, must be checked for calibration response by use of a span gas not more than 24 hours before each cleaning operation;

(5) The analyzers required by 33 CFR 154.2105(j) and 154.2107(d) and (e) may be checked for calibration response by use of a span gas as defined by the test program contained in 33 CFR 154.2180 and 33 CFR 154.2181, and comply with the minimum requirements as defined in 33 CFR 154.2180 and 33 CFR 154.2181, instead of as provided by paragraph (c)(4) of this section; and

(6) The vacuum and pressure relief valves required by 33 CFR 154.2203 must be checked not more than 24 hours before each cleaning operation to make sure they are operating without constraint and that any required flame screens or flame arresters are not damaged.

(d) The facility person in charge must verify the following before beginning cleaning operations:

(1) Each valve in the vapor collection system between the barge's cargo tank and the facility vapor collection system is correctly positioned to allow the collection of vapors;

(2) A vapor collection hose or arm is connected to the barge's vapor collection system;

(3) The electrical insulating devices required by 33 CFR 154.2101(g) and 154.2203(m) are installed;

(4) The maximum allowable gas-freeing rate as determined by the lesser of the following:

(i) A gas-freeing rate corresponding to the maximum vapor processing rate for the tank barge cleaning facility's (TBCF's) VCS, as specified in the facility operations manual; or

(ii) The barge's maximum gas-freeing rate determined in accordance with 46 CFR 39.6007(c);

(5) The gas-freeing rate does not exceed the maximum allowable gas-freeing rate as determined in paragraph (d)(4) of this section;

(6) The maximum allowable stripping rate is determined and does not exceed the volumetric capacity of the barge's vacuum relief valve at the valve's setpoint for the cargo tank being stripped;

(7) The barge's maximum and minimum operating pressures;

(8) Each vapor collection hose has no unrepaired or loose covers, kinks, bulges, soft spots, or any other defects that would permit the discharge of vapor through the hose material; and no external gouges, cuts, or slashes that penetrate the first layer of hose reinforcement;

(9) The freezing point of each cargo. If there is a possibility that the ambient air temperature during cleaning operations will be at or below the freezing point of the cargo, adequate precautions have been taken to prevent freezing of vapor or condensate, or to detect and remove the frozen liquid and condensate to prevent accumulation; and

(10) The cargo vapor is evaluated for the potential to polymerize, and adequate precautions have been taken to prevent and detect polymerization of the cargo vapors.

(e) A vapor collection system must not be used unless the following tests and inspections are completed to the satisfaction of the facility person in charge:

(1) Each vapor collection hose, vapor collection arm, pressure or vacuum relief valve, and pressure sensor is tested and inspected in accordance with 33 CFR 156.170(b), (c), and (f);

(2) Each remote operating or indicating device is tested for proper operation in accordance with 33 CFR 156.170(f); and

(3) Each required detonation arrester has been inspected internally within the last year, or more frequently if operational experience has shown that frequent clogging or rapid deterioration is likely.

(f) If one or more analyzers required by 33 CFR 154.2107(d) and (e) become inoperable during gas-freeing operations, the operation may continue, provided that at least one analyzer remains operational; however, no further gas-freeing operations may be started until all inoperable analyzers are repaired or replaced.

(g) Whenever a condition results in a shutdown of the VCS, the cleaning operations must be immediately terminated. The operation may not resume until the cause of the shutdown has been investigated and corrective action taken.

(h) If it is suspected that a flare in the VCS has had a flashback, or if a flame is detected on a detonation arrester required by 33 CFR 154.2109(c)(2), the cleaning operation must be stopped and may not resume until the detonation arrester and any quick-closing stop valves downstream of the detonation arrester have been inspected and found to be in satisfactory condition.

(i) If a vacuum displacement system is used for gas-freeing, the facility person in charge of the cleaning operation must verify the following items:

(1) The minimum amount of open area for air flow on the barge has been determined so that the pressure in the cargo tank cannot be less than 14.5 pounds per square inch absolute (psia) (−0.2 pounds per square inch gauge (psig)) at the maximum flow capacity of the vapor-moving device;

(2) Any hatch or fitting providing the minimum open area has been secured open so that accidental closure is not possible; and

(3) The hatch and/or fitting must be opened before the pressure in the cargo tank falls below 10 percent of the highest setting of any of the barge's vacuum relief valves.

(j) 33 CFR 154.2150(p) and (q) apply to a TBCF's VCS.

Appendix B to Part 154 [Removed and Reserved]

10. Remove and reserve Appendix B to part 154.

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

11. The authority citation for part 155 is revised to read as follows:

Authority: 33 U.S.C. 1225, 1231, 1321(j), 1903(b); 46 U.S.C. 3703; E.O. 11735, 3 CFR,

1971–1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1. Section 155.490 also issued under section 4110(b) of Pub. L. 101–380.

§ 155.750 [Amended]

12. In § 155.750(d)—

a. Remove the citation "46 CFR 39.30–1(d)(1) through (d)(3)", wherever it appears, and add, in its place, the citation "46 CFR 39.3001(d)(1) through (d)(3);

b. Remove the citation "46 CFR 39.30–1(b)", wherever it appears, and add, in its place, the citation "46 CFR 39.3001(c)"; and

c. Remove the citation "46 CFR 39.30–1(h)", wherever it appears, and add, in its place, the citation "46 CFR 39.3001(g)".

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

13. The authority citation for part 156 is revised to read as follows:

Authority: 33 U.S.C. 1225, 1231, 1321(j); 46 U.S.C. 3703, 3703a, 3715; E.O. 11735, 3 CFR 1971–1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1.

14. In § 156.120—

a. Revise paragraph (aa) introductory text to read as set out below;

b. In paragraph (aa)(4), remove the word "loading" and add, in its place, the word "transfer";

c. In paragraph (aa)(7) introductory text, after the words "the transfer operation", add the words "or in accordance with 33 CFR 154.2150(b)";

d. In paragraph (aa)(7)(ii), remove the words "§ 154.820(a), § 154.824(d) and (e) of this chapter" and add, in their place, the words "33 CFR 154.2105(a) and (j) and 154.2107(d) and (e)";

e. Revise paragraph (aa)(9) to read as set out below;

f. Add paragraphs (aa)(10), (aa)(11), and (aa)(12) to read as follows:

§ 156.120 Requirements for transfer.

* * * * *

(aa) A transfer operation which includes collection of vapor emitted to or from a vessel's cargo tanks through a vapor control system (VCS) not located on the vessel must have the following verified by the person in charge:

* * * * *

(9) The oxygen content in the vapor space of each of the vessel's cargo tanks connected to the vapor collection system, if inerted, is—

(i) At or below 60 percent by volume of the cargo's minimum oxygen concentration for combustion; or

(ii) At or below 8 percent by volume, at the start of cargo transfer, for vapor of crude oil, gasoline blends, or benzene;

(10) The freezing point of each cargo has been determined. If there is a possibility that the ambient air temperature during transfer operations will be at or below the freezing point of the cargo, adequate precautions have been taken to prevent freezing of vapor or condensate, or to detect and remove the liquid condensate and solids to prevent accumulation;

(11) If the cargo has the potential to polymerize, adequate precautions have been taken to prevent and detect polymerization of the cargo vapors; and

(12) The VCS has been cleaned, in accordance with 33 CFR 154.2150(p), between transfers of incompatible cargoes.

* * * * *

15. In § 156.170—

a. In paragraph (g), after the words "collects vapor emitted", add the words "to or";

b. In paragraph (g)(3), remove the words "and § 154.828(a) of this chapter or 46 CFR 39.40–3(d), and each flame arrester required by § 154.826(a), § 154.828(a) and (c) of this chapter" and add, in their place, the words "33 CFR 154.2109, 154.2110, and 154.2111 or 46 CFR 39.4003, and each flame arrester required by 33 CFR 154.2105(j)";

c. In paragraph (g)(4), remove the words "§ 154.820(a) and § 154.824(d) and (e) of this chapter" and add, in their place, the words "33 CFR 154.2105(a) and (j), 154.2107(d) and (e), and 154.2110"; and

d. Add new paragraph (i) to read as follows:

§ 156.170 Equipment tests and inspections.

* * * * *

(i) Upon the request of the owner or operator, the Commandant may approve alternative methods of compliance to the testing and inspection requirements of paragraph (g)(3) of this section if the Commandant determines that the alternative methods provide an equivalent level of safety and protection from fire, explosion, and detonation. Criteria to consider when evaluating requests for alternative methods may include, but are not limited to: Operating and inspection history, type of equipment, new technology, and site-specific conditions that support the requested alternative.

46 CFR—SHIPPING

PART 35—OPERATIONS

16. The authority citation for part 35 is revised to read as follows:

Authority: 33 U.S.C. 1225, 1231, 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

17. Revise § 35.35–5 to read as follows:

§ 35.35–5 Electrical bonding—TB/ALL.

A vessel must use an insulating flange or one continuous length of nonconductive hose between the vessel and the shore transfer facility. The operator may not use external cables or straps to achieve electrical bonding.

18. In § 35.35–20—

a. In paragraph (m) introductory text, after the words "collection of cargo vapor", add the words "to or";

b. In paragraph (m)(1), after the words "vapor to flow to", add the words "or from"; and

c. Revise paragraph (m)(9) to read as follows:

§ 35.35–20 Inspection before transfer of cargo—TB/ALL.

* * * * *

(m) * * *

(9) The oxygen content in the vapor space of each of the vessel's inerted cargo tanks connected to the vapor collection system is—

(i) At or below 60 percent by volume of the cargo's minimum oxygen concentration for combustion at the start of cargo transfer; or

(ii) At or below 8 percent by volume, at the start of cargo transfer, for vapor of crude oil, gasoline blends, or benzene.

19. In § 35.35–30—

a. In paragraph (c) introductory text, after the words "collection of cargo vapor", add the words "to or";

b. In paragraph (c)(1), after the words "vapor to flow to", add the words "or from"; and

c. Revise paragraph (c)(8) to read as follows:

§ 35.35–30 "Declaration of Inspection" for tank vessels—TB/ALL.

* * * * *

(c) * * *

(8) Has the oxygen content in the vapor space of each of the vessel's inerted cargo tanks connected to the vapor collection system been verified to be—

(i) At or below 60 percent by volume, at the start of cargo transfer, of the cargo's minimum oxygen concentration for combustion; or

(ii) At or below 8 percent by volume, at the start of cargo transfer, for vapor of crude oil, gasoline blends, or benzene.

20. Revise part 39 to read as follows:

PART 39—VAPOR CONTROL SYSTEMS

Subpart 39.1000—General

Subpart 39.2000—Equipment and Installation

Subpart 39.3000—Vapor Collection Operations During Cargo Transfer

Subpart 39.4000—Vessel-to-Vessel Transfers Using Vapor Balancing

Subpart 39.5000—Multi-Breasted Loading Using a Single Facility Vapor Connection

Subpart 39.6000—Tank Barge Cleaning Operations With Vapor Collection

Authority: 33 U.S.C. 1225, 1231; 42 U.S.C. 7511b(f)(2); 46 U.S.C. 3306, 3703, 3715(b); E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

Subpart 39.1000—General

§ 39.1001 Applicability—TB/ALL.

(a) This part applies to tank vessels that use a vapor control system (VCS) to collect vapors emitted to or from a vessel's cargo tanks while operating in the navigable waters of the United States, except—

(1) Tank vessels with an operating vapor collection system approved by the Coast Guard prior to July 23, 1990, for the collection and transfer of cargo vapor to specific facilities. Such tank vessels are only subject to 46 CFR 39.1013, 39.3001, and 39.4005; and

(2) A tank barge that collects vapors emitted from its cargo tanks during gas-freeing or cleaning operations at a cleaning facility. This type of tank barge is only subject to 46 CFR part 39, subparts 39.1000 and 39.6000, and must comply with requirements of these two subparts at the time of its next inspection for certification required by 46 CFR 31.10–15, but no later than [DATE 5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE].

(b) This part does not apply to the collection of vapors of liquefied flammable gases as defined in 46 CFR 30.10–39.

(c) In this part, regulatory measurements, whether in the metric or English system, are sometimes followed by approximate equivalent measurements in parentheses, which are given solely for the reader's convenience. Regulatory compliance with the regulatory measurement is required.

§ 39.1003 Definitions—TB/ALL.

As used in this part only:

Barge vapor connection means the point in a barge's piping system where it connects to a vapor collection hose or arm. This may be the same as the barge's cargo connection while controlling vapors during tank barge cargo tank-cleaning operations.

Cargo deck area means that part of the weather deck that is directly over the cargo tanks.

Cargo tank venting system means the venting system required by 46 CFR 32.55.

Certifying entity means a certifying entity accepted by the Coast Guard as such pursuant to 33 CFR part 154, subpart P.

Cleaning facility means a facility used or capable of being used to conduct cleaning operations on a tank barge.

Cleaning operation means any stripping, gas-freeing, or tank-washing operation of a barge's cargo tanks conducted at a cleaning facility.

Commandant means the Commandant (CG–522), U.S. Coast Guard, 2100 2nd St., SW., Stop 7126, Washington, DC 20593–7126.

Facility vapor connection means the point in a facility's fixed vapor collection system where the system connects with the vapor collection hose or the base of the vapor collection arm.

Fixed stripping line means a pipe extending to the low point of each cargo tank, which is welded through the deck and terminated above deck with a valve, and plugged at the open end.

Flammable liquid means a liquid as defined in 46 CFR 30.10–22.

Fluid displacement system means a system that removes vapors from a barge's cargo tanks during gas freeing through the addition of an inert gas or other medium into the cargo tank.

Fluid injection connection means the point in a fluid displacement system at which the fixed piping or hose that supplies the inert gas or other medium connects to a barge's cargo tanks or fixed piping system.

Gas freeing means the removal of vapors from a tank barge.

Independent as applied to two systems means that one system will operate when there is a failure of any part of the other system.

Inerted means the oxygen content of the vapor space in a cargo tank is reduced in accordance with the inert gas requirements of 46 CFR 32.53 or 153.500. If a cargo vapor in a cargo tank that is connected to the vapor collection system is defined as inerted at the start of cargo transfer, the oxygen content in the vapor space of the cargo tank must not exceed 60 percent by volume of the cargo's minimum oxygen concentration for combustion, or 8 percent by volume for vapor of crude oil, gasoline blends, or benzene.

Marine Safety Center (MSC) means the Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd Street, SW., Stop 7102, Washington, DC 20593–7102.

Maximum allowable gas-freeing rate means the maximum volumetric rate at which a barge may be gas-freed during cleaning operations.

Maximum allowable stripping rate means the maximum volumetric rate at which a barge may be stripped during cleaning operations prior to the opening

of any hatch and/or fitting on the cargo tank being stripped.

Maximum allowable transfer rate means the maximum volumetric rate at which a vessel may receive cargo or ballast.

Minimum oxygen concentration for combustion (MOCC) means the lowest level of oxygen in a vapor or vapor mixture that will support combustion.

New vapor collection system means a vapor collection system that is not an existing vapor collection system.

Service vessel means a vessel that transports bulk liquid cargo between a facility and another vessel.

Set pressure means the pressure at which the pressure or vacuum valve begins to open and the flow starts through the valve.

Stripping means the removal, to the maximum extent practicable, of cargo residue remaining in the barge's cargo tanks and associated fixed piping system after cargo transfer or during cleaning operations.

Vacuum displacement system means a system that removes vapors from a barge's cargo tanks during gas-freeing by sweeping air through the cargo tank hatch openings.

Vapor balancing means the transfer of vapor displaced by incoming cargo from the tank of a vessel or facility receiving cargo into a tank of the vessel or facility delivering cargo via a vapor collection system.

Vapor collection system means an arrangement of piping and hoses used to collect vapor emitted to or from a vessel's cargo tanks and to transport the vapor to a vapor processing unit or a tank.

Vapor control system (VCS) means an arrangement of piping and equipment used to control vapor emissions collected to or from a vessel. It includes the vapor collection system and vapor processing unit or a tank.

Vapor processing unit means the components of a VCS that recover, destroy, or disperse vapor collected from a vessel.

Vessel-to-vessel transfer (direct or through a shore loop) means either—

(1) The transfer of a bulk liquid cargo from a tank vessel to a service vessel; or

(2) The transfer of a bulk liquid cargo from a service vessel to another vessel in order to load the receiving vessel to a deeper draft.

Vessel vapor connection means the point in a vessel's fixed vapor collection system where the system connects with the vapor collection hose or arm.

§ 39.1005 Incorporation by reference—TB/ALL.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, it is available for inspection at the Coast Guard, Office of Operating and Environmental Standards (CG–522) 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources indicated in this section.

(b) American Petroleum Institute (API), 1220 L Street, NW., Washington, DC 20005.

(1) API Standard 2000, Venting Atmospheric and Low-Pressure Storage Tanks (Non-refrigerated and Refrigerated), Third Edition, January 1982 (reaffirmed December 1987)("API 2000"), incorporation by reference (IBR) approved for 46 CFR 39.2011.

(2) [Reserved]

(c) American National Standards Institute (ANSI), 25 West 43rd Street, 4th floor, New York, NY 10036.

(1) ANSI B16.5, Steel Pipe Flanges and Flanged Fittings, 1981, IBR approved for 46 CFR 39.2001 and 39.6001.

(2) [Reserved]

(d) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

(1) ASTM F1122—Standard Specification for Quick Disconnect Couplings, 1992, IBR approved for 46 CFR 39.2001.

(2) ASTM F1271—Standard Specification for Spill Valves for Use in Marine Tank Liquid Overpressure Protection Applications, December 29, 1989, IBR approved for 46 CFR 39.2009.

(e) International Electrotechnical Commission (IEC), Bureau Central de la Commission Electrotechnique Internationale, 3, rue de Varembé, P.O. Box 131, CH—1211 Geneva 20, Switzerland.

(1) IEC 60309–1—Plugs, Socket-Outlets and Couplers for Industrial Purposes—Part 1: General Requirements, Edition 4.1 2005–12, IBR approved for 46 CFR 39.2009.

(2) IEC 60309–2—Plugs, Socket-Outlets and Couplers for Industrial Purposes—Part 2: Dimensional Interchangeability Requirements for Pin and Contact-tube Accessories, Edition 4.1 2005–12, IBR approved for 46 CFR 39.2009.

(f) International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, United Kingdom.

(1) International Convention for the Safety of Life at Sea, Consolidated Text of the 1974 SOLAS Convention, the 1978 SOLAS Protocol, the 1981 and 1983 SOLAS Amendments (1986) ("SOLAS"), IBR approved for 46 CFR 39.2001.

(2) [Reserved]

(g) National Electrical Manufacturers Association (NEMA), 1300 North 17th Street, Suite 1752, Rosslyn, VA 22209.

(1) ANSI/NEMA WD–6—Wiring Devices, Dimensional Requirements, 1988 ("NEMA WD–6"), IBR approved for 46 CFR 39.2009.

(2) [Reserved]

(h) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169–7471.

(1) NFPA 70—National Electrical Code, 1987, IBR approved for 46 CFR 39.2009.

(2) [Reserved]

(i) Oil Companies International Marine Forum (OCIMF), 29 Queen Anne's Gate, London SWIH 9BU, England.

(1) International Safety Guide for Oil Tankers and Terminals, Fifth Edition, 2006 ("ISGOTT"), IBR approved for 46 CFR 39.3001, 39.5001, 39.6001, and 39.6005.

(2) [Reserved]

§ 39.1009 Additional tank vessel vapor processing unit requirements—TB/ALL.

(a) Vapor piping, fitting, valves, flanges, and pressure vessels comprising the construction and installation of a permanent or portable vapor processing unit onboard a tank vessel must meet the marine engineering requirements of 46 CFR chapter I, subchapter F.

(b) Electrical equipment comprising the construction and installation of a permanent or portable vapor processing unit onboard a tank vessel must meet the electrical engineering requirements of 46 CFR chapter I, subchapter J.

(c) In addition to complying with the rules of this part, tank vessels with a permanent or portable vapor processing unit must meet the requirements of 33 CFR part 154, subpart P to the satisfaction of the Commandant.

(d) When the requirements of 46 CFR chapter I, subchapters F and J, conflict with 33 CFR part 154, subpart P, the requirements of 46 CFR chapter I, subchapters F and J apply, unless specifically authorized by the Marine Safety Center.

§ 39.1011 Personnel training requirements—TB/ALL.

Personnel responsible for operating the vapor control system (VCS) must complete a training program prior to the operation of the system installed onboard the tank vessel. As part of the training program, personnel must be able to demonstrate, through drills and practical knowledge, the proper VCS operation procedures for normal and emergency conditions. The training program must cover the following subjects:

(a) Purpose of a VCS;

(b) Principles of the VCS;

(c) Components of the VCS;

(d) Hazards associated with the VCS;

(e) Coast Guard regulations in this part;

(f) Vapor control operation procedures during cargo transfer or tank barge cleaning, including:

(1) Testing and inspection requirements;

(2) Pre-transfer or pre-cleaning procedures;

(3) Connection sequence;

(4) Startup procedures; and

(5) Normal operations; and

(g) Emergency procedures.

§ 39.1013 U.S.-flagged tank vessel certification procedures for vapor control system designs—TB/ALL.

(a) For an existing Coast Guard-approved vapor control system (VCS) that has been operating before July 23, 1990, the tank vessel owner or operator must submit detailed engineering drawings, calculations, and specifications to the Marine Safety Center (MSC) for review and approval before modifying the system or transferring vapor to a facility that was not approved by the Coast Guard for that kind of vapor transfer.

(b) For a Coast Guard-approved VCS that has been operating since July 23, 1990, the tank vessel owner or operator must submit plans, calculations, and specifications to the MSC for review and approval before modifying the system.

(c) A tank vessel owner or operator must submit plans, calculations, and specifications for a new tank vessel VCS to the MSC for review and approval before installing the system. A permanent or portable vapor processing unit onboard a tank vessel will be reviewed, together with the tank vessel, as a complete and integrated system.

(d) Once the plan review and inspection of the tank vessel VCS satisfy the requirements of this part, the Officer in Charge, Marine Inspection (OCMI) will endorse the Certificate of Inspection for the U.S.-flagged tank vessel.

§ 39.1015 Foreign-flagged tank vessel certification procedures for vapor control system designs—TB/ALL.

As an alternative to meeting the requirements in 33 CFR 39.1013(a), (b), and (c), the owner or operator of a foreign-flagged tank vessel may submit certification by the classification society that classifies vessels under their foreign flags to the Marine Safety Center. Upon receipt of the certification stating that the vapor control system (VCS) meets the requirements of this part, the Officer in Charge, Marine Inspection (OCMI) will endorse the vessel's Certificate of Compliance for foreign-flagged tank vessels.

§ 39.1017 Additional certification procedures for a tank barge vapor collection system design—B/ALL.

(a) For a tank barge vapor collection system intended for operation in multi-breasted loading using a single facility vapor connection, the tank barge owner or operator must submit plans, calculations, and specifications to the Marine Safety Center (MSC) for review and approval before beginning a multi-breasted loading operation.

(b) For a tank barge intended for collecting vapors emitted from its cargo tanks during gas-freeing or cleaning operations at a cleaning facility, the barge owner or operator must submit the following items to the MSC for review and approval:

(1) Stripping system plans and specifications; and

(2) Stripping and/or gas-freeing rate calculations.

(c) Once the vapor collection system satisfies the requirements of this part, the Officer in Charge, Marine Inspection (OCMI) will endorse the Certificate of Inspection that the tank barge is acceptable for collecting vapors during cleaning operations.

Subpart 39.2000—Equipment and Installation

§ 39.2001 Vapor collection system—TB/ALL.

(a) Vapor collection piping must be fixed piping and the vessel's vapor connection must be located as close as practicable to the loading manifold, except—

(1) As allowed by the Commandant; and

(2) A vessel certificated to carry cargo listed in 46 CFR, part 151, Table 151.05 or part 153, Table 1 may use flexible hoses no longer than three meters (9.84 feet) for interconnection between fixed piping onboard the vessel to preserve segregation of cargo systems. These flexible hoses must also meet the requirements in paragraph (i) of this section, excluding paragraph (i)(5), and meet the following additional requirements:

(i) The installation of flexible hoses must include an isolation valve mounted on the tank side of the connection; and

(ii) Hose connections permitted under paragraph (a)(2) of this section are exempt from the requirements of paragraph (h) of this section.

(b) When collecting incompatible vapors simultaneously, vapors must be kept separate throughout the entire vapor collection system.

(c) Vapor collection piping must be electrically bonded to the hull and must be electrically continuous.

(d) The vapor collection system must have a mechanism to eliminate liquid condensation, such as draining and collecting liquid from each low point in the line.

(e) For a tankship that has an inert gas system, a mechanism must be in place to isolate the inert gas supply from the vapor control system (VCS). The inert gas main isolation valve required by chapter II–2, Regulation 62.10.8 of SOLAS (incorporated by reference, *see* 46 CFR 39.1005), may be used to satisfy this requirement.

(f) The vapor collection system must not interfere with the proper operation of the cargo tank venting system.

(g) The tank vessel owner or operator must install an isolation valve capable of manual operation. It must be located at the vessel vapor connection and must clearly show whether the valve is in the open or closed position via an indicator, valve handle, or valve stem.

(h) The last 1.0 meter (3.3 feet) of vapor piping upstream of the vessel vapor connection and each end of a vapor hose must be—

(1) Painted in the sequence of red/yellow/red. The width of the red bands must be 0.1 meter (0.33 foot) and the width of the middle yellow band must be 0.8 meter (2.64 feet); and

(2) Labeled with the word "VAPOR" painted in black letters at least 50.8 millimeters (2 inches) high.

(i) Hoses that transfer vapors must meet the following requirements:

(1) Have a design burst pressure of at least 25 pounds per square inch gauge (psig);

(2) Have a maximum allowable working pressure no less than 5 psig;

(3) Be capable of withstanding at least a 2.0 pounds per square inch (psi) vacuum without collapsing or constricting;

(4) Be electrically continuous with a maximum resistance of 10,000 ohms;

(5) Have flanges with—

(i) A bolthole arrangement complying with the requirements for 150 pound

class ANSI B16.5 flanges (incorporated by reference, *see* 46 CFR 39.1005); and

(ii) One or more 15.9 millimeter (0.625 inch) diameter hole(s) located midway between boltholes and in line with the bolthole pattern; and

(6) Be abrasion and kinking resistant.

(j) Each vessel vapor connection flange face must have a permanent stud projecting outward that has a 12.7 millimeter (0.5 inch) diameter and is at least 25.4 millimeters (1 inch) long. It must be located at the top of the flange face, midway between boltholes, and in line with the bolthole pattern.

(k) Quick disconnect couplings (QDCs) may be used instead of flanges at the flexible hose connection and fixed piping on tankships provided they meet ASTM F1122 (incorporated by reference, *see* 46 CFR 39.1005) and are designed as "Standard Class QDC."

(l) Hose saddles that provide adequate support to prevent kinking or collapse of hoses must accompany vapor hose handling equipment.

(m) For cargoes that have toxic properties, listed in 46 CFR Table 151.05 with the "Special requirements" column referring to 46 CFR 151.50–5, an overfill alarm and shutdown system that meet the requirements of 46 CFR 39.2007(a), 39.2009(a), or 39.2009(b) must be used for primary overfill protection. If the vessel is also equipped with spill valves or rupture disks, their setpoints must be set higher than the vessel's pressure relief valve setting as required by 46 CFR 39.2009(c)(1).

§ 39.2003 Cargo gauging system—TB/ALL.

(a) A cargo tank of the tank vessel connected to a vapor collection system must be equipped with a permanent or portable cargo gauging device that—

(1) Is a closed type as defined in 46 CFR 151.15.10(c) that does not require opening the tank to the atmosphere during cargo transfer;

(2) Allows the operator to determine the level of liquid in the tank for the full range of liquid levels in the tank;

(3) Has an indicator for the level of liquid in the tank that is located where cargo transfer is controlled; and

(4) If portable, is installed on the tank during the entire transfer operation.

(b) Each cargo tank of a tank barge must have a high-level indicating device, unless the barge complies with 46 CFR 39.2009(a). The high-level indicating device must—

(1) Indicate visually the level of liquid in the cargo tank when the liquid level is within a range of 1 meter (3.28 feet) of the top of the tank;

(2) Show a permanent mark to indicate the maximum liquid level permitted under 46 CFR 39.3001(e) at even keel conditions; and

(3) Be visible from all cargo control areas.

§ 39.2007 Tankship liquid overfill protection—T/ALL.

(a) Each cargo tank of a tankship must be equipped with an intrinsically safe high-level alarm and a tank overfill alarm.

(b) If installed after July 23, 1990, the high-level alarm and tank overfill alarm required by paragraph (a) of this section must—

(1) Be independent of each other;

(2) Activate an alarm in the event of loss of power to the alarm system;

(3) Activate an alarm during the failure of electrical circuitry to the tank level sensor; and

(4) Be able to be inspected at the tank for proper operation prior to each transfer. This procedure may be achieved with the use of an electronic self-testing feature that monitors the condition of the alarm circuitry and sensor.

(c) The high-level alarm required by paragraph (a) of this section must—

(1) Activate an alarm once the cargo level reaches 95 percent of the tank capacity or higher, but before the tank overfill alarm;

(2) Be identified with the legend "High-level Alarm" in black letters at least 50.8 millimeters (2 inches) high on a white background; and

(3) Activate a visible and audible alarm so that it can be seen and heard on the vessel where cargo transfer is controlled.

(d) The tank overfill alarm required by paragraph (a) of this section must—

(1) Be independent of the cargo gauging system;

(2) Be identified with the legend "TANK OVERFILL ALARM" in black letters at least 50.8 millimeters (2 inches) high on a white background;

(3) Activate a visible and audible alarm so that it can be seen and heard on the vessel where cargo transfer is controlled and in the cargo deck area; and

(4) Activate an alarm early enough to allow the person in charge of transfer operations to stop the cargo transfer before the tank overflows.

(e) If a spill valve is installed on a cargo tank fitted with a vapor collection system, it must meet the requirements of 46 CFR 39.2009(c).

(f) If a rupture disk is installed on a cargo tank fitted with a vapor collection system, it must meet the requirements of 46 CFR 39.2009(d).

§ 39.2009 Tank barge liquid overfill protection—B/ALL.

(a) Each cargo tank of a tank barge must have one of the following liquid overfill protection arrangements:

(1) A system meeting the requirements of 46 CFR 39.2007 that—

(i) Includes a self-contained power supply;

(ii) Is powered by generators on the barge; or

(iii) Receives power from a facility and is fitted with a shore tie cable and a 120-volt, 20-ampere explosion-proof plug that meets—

(A) NEMA WD–6 (incorporated by reference, *see* 46 CFR 39.1005);

(B) NFPA 70, Articles 410–57 and 501–12 (incorporated by reference, *see* 46 CFR 39.1005); and

(C) 46 CFR 111.105–9;

(2) An intrinsically safe overfill control system that—

(i) Is independent of the cargo-gauging device required by 46 CFR 39.2003(a);

(ii) Activates an alarm and automatic shutdown system at the facility overfill control panel 60 seconds before the tank is 100 percent liquid-full during a facility-to-vessel cargo transfer;

(iii) Activates an alarm and automatic shutdown system on the vessel receiving cargo 60 seconds before the tank is 100 percent liquid-full during a vessel-to-vessel cargo transfer;

(iv) Can be inspected at the tank for proper operation prior to each loading;

(v) Consists of components that, individually or in series, will not generate or store a total of more than 1.2 volts (V), 0.1 amperes (A), 25 megawatts (MW), or 20 microJoules (μJ);

(vi) Has at least one tank overfill sensor switch per cargo tank that is designed to activate an alarm when its normally closed contacts are open;

(vii) Has all tank overfill sensor switches connected in series;

(viii) Has interconnecting cabling that meets 46 CFR 111.105–11(b) and (d), and 46 CFR 111.105–17(a); and

(ix) Has a male plug with a five-wire, 16–A connector body meeting IEC 60309–1 and IEC 60309–2 (both incorporated by reference, *see* 46 CFR 39.1005), that is—

(A) Configured with pins S2 and R1 for the tank overfill sensor circuit, pin G connected to the cabling shield, and pins N and T3 reserved for an optional high-level alarm circuit meeting the requirements of this paragraph; and

(B) Labeled "Connector for Barge Overflow Control System" and labeled with the total inductance and capacitance of the connected switches and cabling;

(3) A spill valve that meets ASTM F1271 requirements (incorporated by reference, *see* 46 CFR 39.1005), and—

(i) Relieves at a predetermined pressure higher than the pressure at which the pressure relief valves meeting the requirements of 46 CFR 39.2011 operate;

(ii) Limits the maximum pressure at the top of the cargo tank during liquid overfill to not more than the maximum design working pressure for the tank when at the maximum loading rate for the tank; and

(iii) Has a means to prevent opening due to cargo sloshing while the vessel is in ocean or coastwise service; or

(4) A rupture disk arrangement that meets paragraphs (a)(3)(i), (a)(3)(ii), and (a)(3)(iii) of this section and is approved by the Commandant.

(b) A tank barge authorized to carry a cargo having toxic properties, meaning they are listed in 46 CFR Table 151.05 with the "Special requirements" column referring to 46 CFR 151.50–5, must comply with the requirements of 46 CFR 39.2001(l).

§ 39.2011 Vapor overpressure and vacuum protection—TB/ALL.

(a) The cargo tank venting system required by 46 CFR 32.55 must—

(1) Be capable of discharging cargo vapor at the maximum transfer rate plus the vapor growth for the cargo such that the pressure in the vapor space of each tank connected to the vapor control system (VCS) does not exceed—

(i) The maximum design working pressure for the tank; or

(ii) If a spill valve or rupture disk is fitted, the pressure at which the device operates;

(2) Relieve at a pressure corresponding to a pressure in the cargo tank vapor space not less than 1.0 pounds per square inch gauge (psig);

(3) Prevent a vacuum, which generates in any tank connected to the vapor collection system during the withdrawal of cargo or vapor at maximum rates, in a cargo tank vapor space from exceeding the maximum design vacuum; and

(4) Not relieve at a vacuum corresponding to a vacuum in the cargo tank vapor space between 14.7 pounds per square inch absolute (psia) (0 psig) and 14.2 psia (−0.5 psig).

(b) Each pressure-vacuum relief valve must—

(1) Be of a type approved under 46 CFR 162.017, for the pressure and vacuum relief setting desired;

(2) Be tested for venting capacity in accordance with paragraph 1.5.1.3 of API 2000 (incorporated by reference, *see* 46 CFR 39.1005). The test must be carried out with a flame screen fitted at the vacuum relief opening and at the discharge opening if the pressure-vacuum relief valve is not designed to ensure a minimum vapor discharge velocity of 30 meters (98.4 feet) per second; and

(3) If installed after July 23, 1991, have a mechanism to check that it operates freely and does not remain in the open position.

(c) A liquid filled pressure-vacuum breaker may be used for vapor overpressure and vacuum protection subject to Commandant approval.

(d) Vapor growth must be calculated using a method approved by the Marine Safety Center.

§ 39.2013 High and low vapor pressure protection for tankships—T/ALL.

Each tankship with a vapor collection system must be fitted with a pressure-sensing device, located as close as practicable to the vessel vapor connection, that measures the pressure in the main vapor collection line, which—

(a) Has a pressure indicator located on the tankship where the cargo transfer is controlled; and

(b) Has a high-pressure and a low-pressure alarm that—

(1) Gives an audible and a visible warning on the vessel where the cargo transfer is controlled;

(2) Activates an alarm when the pressure-sensing device measures a high pressure of not more than 90 percent of the lowest pressure relief valve setting in the cargo tank venting system; and

(3) Activates an alarm when the pressure-sensing device measures a low pressure of not less than 0.144 pounds per square inch gauge (psig) for an inerted tankship, or the lowest vacuum relief valve setting in the cargo tank venting system for a non-inerted tankship.

§ 39.2014 Polymerizing cargoes safety—TB/ALL.

(a) Common vapor headers for polymerizing cargoes must be constructed with adequate means to permit internal examination of vent headers.

(b) Vapor piping systems and pressure-vacuum valves that are used for polymerizing cargoes must be inspected internally at least annually.

(c) Pressure-vacuum valves and spill valves which are used for polymerizing cargoes must be tested for proper movement prior to each transfer.

§ 39.2015 Tank barge pressure-vacuum indicating device—B/ALL.

A fixed pressure-indicating device must be installed as close as practicable to the vessel vapor connection on a tank barge with a vapor collection system. The indicating device must measure the pressure vacuum in the main vapor collection line and have a pressure indicator located where the cargo transfer is controlled.

Subpart 39.3000—Vapor Collection Operations During Cargo Transfer

§ 39.3001 Operational requirements for vapor control systems during cargo transfer—TB/ALL.

(a) Vapor from a tank vessel may not be transferred to a facility in the United States, or vapor from a facility storage tank may not be transferred to a tank vessel, unless the facility's marine vapor control system (VCS) is certified by a certifying entity as meeting the requirements of 33 CFR part 154, subpart P and the facility's facility operations manual is marked by the local Coast Guard Captain of the Port (COTP) as required by 33 CFR 154.325(d).

(b) Vapor from a tank vessel may not be transferred to a vessel that does not have its certificate of inspection or certificate of compliance endorsed as meeting the requirements of this part and for controlling vapor of the cargo being transferred.

(c) For each cargo transferred using a vapor collection system, the pressure drop through the vapor collection system from the most remote cargo tank to the vessel vapor connection, including vapor hoses if used by the vessel, must be—

(1) Calculated at the maximum transfer rate and at lesser transfer rates;

(2) Calculated using a density estimate for the cargo vapor and air mixture, or vapor and inert gas mixture, based on a partial pressure (partial molar volumes) method for the mixture, assuming ideal gas law conditions;

(3) Calculated using a vapor growth rate as stated in 46 CFR 39.2011(d) for the cargo being transferred; and

(4) Included in the vessel's transfer procedures as a table or graph, showing the liquid transfer rate versus the pressure drop.

(d) The rate of cargo transfer must not exceed the maximum allowable transfer rate as determined by the lesser of the following:

(1) 80 percent of the total venting capacity of the pressure relief valves in the cargo tank venting system when relieving at the set pressure;

(2) The total vacuum relieving capacity of the vacuum relief valves in the cargo tank venting system when relieving at the set pressure; and

(3) For a given pressure at the facility vapor connection, or if vessel-to-vessel transfer at the vapor connection of the service vessel, then the rate based on

pressure drop calculations at which the pressure in any cargo tank connected to the vapor collection system exceeds 80 percent of the setting of any pressure relief valve in the cargo tank venting system.

(e) Cargo tanks must not be filled higher than—

(1) 98.5 percent of the cargo tank volume; or

(2) The level at which an overfill alarm complying with 46 CFR 39.2007 or 39.2009(a)(2) is set.

(f) A cargo tank should remain sealed from the atmosphere during cargo transfer operations. The cargo tank may only be opened temporarily for gauging or sampling while the tank vessel is connected to a VCS as long as the following conditions are met:

(1) The cargo tank is not being filled or no vapor is being transferred into the cargo tank;

(2) For cargo loading, any pressure in the cargo tank vapor space is first reduced to atmospheric pressure by the VCS, except when the tank is inerted;

(3) The cargo is not required to be closed or restricted gauged by 46 CFR part 151, Table 151.05 or part 153, Table 1; and

(4) For static accumulating cargo, all metallic equipment used in sampling or gauging must be electrically bonded to the vessel and remain bonded to the vessel until it is removed from the tank, and if the tank is not inerted, 30 minutes must have elapsed after any cargo transfer to the tank is stopped, before the equipment is put into the tank.

(g) For static accumulating cargo, the initial transfer rate must be controlled in accordance with OCIMF ISGOTT Section 11.1.7 (incorporated by reference, *see* 46 CFR 39.1005), in order to minimize the development of a static electrical charge.

(h) If cargo vapor is collected by a facility that requires the vapor from the vessel to be inerted in accordance with 33 CFR 154.2105, the oxygen content in the vapor space of each cargo tank connected to the vapor collection system must not exceed 60 percent by volume of the cargo's minimum oxygen concentration for combustion (MOCC), or 8 percent by volume for vapor of crude oil, gasoline blends, or benzene, at the start of cargo transfer. The oxygen content of each tank, or each area of a tank formed by each partial bulkhead, must be measured at a point 1.0 meter (3.28 feet) below the tank top and at a point equal to one-half of the ullage.

(i) If the vessel is equipped with an inert gas system, the isolation valve required by 46 CFR 39.2001(e) must remain closed during vapor transfer.

(j) Unless equipped with an automatic self-test and circuit-monitoring feature, each high-level alarm and tank overfill alarm on a cargo tank being loaded, required by 46 CFR 39.2007 or 39.2009, must be tested at the tank for proper operation within 24 hours prior to the start of cargo transfer.

Subpart 39.4000—Vessel-to-Vessel Transfers Using Vapor Balancing

§ 39.4001 General requirements for vapor balancing—TB/ALL.

(a) Vessels using vapor balancing while conducting a vessel-to-vessel transfer operation, directly or through a shore loop, must meet the requirements of this subpart in addition to the requirements of 46 CFR part 39, subparts 39.1000, 39.2000, and 39.3000. Arrangements other than vapor balancing used to control vapor emissions during a vessel-to-vessel transfer operation must receive approval from the Commandant.

(b) A vapor balancing operation must receive approval from the Commandant to use a compressor or blower to assist vapor transfer.

(c) Vapor balancing is prohibited when the cargo tanks on a vessel discharging cargo are inerted and the cargo tanks on a vessel receiving cargo are not inerted.

(d) A vessel that intends to collect vapors (during a vessel-to-vessel transfer operation) from cargoes not previously approved must receive specific approval from the Commandant before beginning transfer operations.

§ 39.4003 Design and equipment for vapor balancing—TB/ALL.

(a) During transfer operations, if the cargo tanks are inerted on a vessel discharging cargo to a receiving vessel with inerted cargo tanks, the service vessel must—

(1) Inert the vapor transfer hose prior to transferring cargo vapor; and

(2) Have an oxygen analyzer with a sensor or sampling connection fitted within 3 meters (9.74 feet) of the vessel vapor connection that—

(i) Activates a visible and an audible alarm on the service vessel where cargo transfer is controlled when the oxygen content in the vapor collection system exceeds 60 percent by volume of the cargo's minimum oxygen concentration for combustion (MOCC), or 8 percent by volume for vapor of crude oil, gasoline blends, or benzene;

(ii) Has an oxygen concentration indicator located on the service vessel where the cargo transfer is controlled; and

(iii) Has a connection for injecting a span gas of known concentration for calibration and testing of the oxygen analyzer.

(b) If the cargo tanks are not inerted on a vessel discharging cargo during transfer operations, and the cargo is flammable or combustible, the vapor collection line on the service vessel must be fitted with a detonation arrester that meets the requirements of 33 CFR 154.2106, and be located within 3 meters (9.74 feet) of the vessel vapor connection.

(c) An electrical insulating flange or one length of non-conductive hose must be provided between the vessel vapor connection on each vessel operating a vessel-to-vessel cargo transfer.

§ 39.4005 Operational requirements for vapor balancing—TB/ALL.

(a) During a vessel-to-vessel transfer operation, each cargo tank being loaded must be connected by the vapor collection system to a cargo tank that is being discharged.

(b) If the cargo tanks on both the vessel discharging cargo and the vessel receiving cargo are inerted, the following requirements must be met:

(1) Each tank on a vessel receiving cargo, which is connected to the vapor collection system, must be tested prior to cargo transfer to ensure that the oxygen content in the vapor space does not exceed 60 percent by volume of the cargo's minimum oxygen concentration for combustion (MOCC), or 8 percent by volume for vapor of crude oil, gasoline blends, or benzene. The oxygen content of each tank, or each area of a tank formed by each partial bulkhead, must be measured at a point 1 meter (3.28 feet) below the tank top and at a point equal to one-half of the ullage;

(2) Prior to starting transfer operations, the oxygen analyzer required by 46 CFR 39.4003(a) must be tested for proper operation;

(3) During transfer operations the oxygen content of vapors being transferred must be continuously monitored;

(4) Cargo transfer must be terminated if the oxygen content exceeds 60 percent by volume of the cargo's MOCC, or 8 percent by volume for vapor of crude oil, gasoline blends, or benzene;

(5) Transfer operations may resume once the oxygen content in the tanks of the vessel receiving cargo is reduced to 60 percent by volume or less of the cargo's MOCC, or 8 percent by volume or less for vapor of crude oil, gasoline blends, or benzene; and

(6) Prior to starting vapor transfer operations, the vapor transfer hose must be purged of air and inerted.

(c) The isolation valve located on the service vessel required by 46 CFR

39.2001(g) must not be opened until the pressure in the vapor collection system on the vessel receiving cargo exceeds the pressure in the vapor collection system on the vessel discharging cargo.

(d) The vessel discharging cargo must control the cargo transfer rate so that the transfer rate does not exceed—

(1) The authorized maximum discharge rate of the vessel discharging cargo;

(2) The authorized maximum loading rate of the vessel receiving cargo; or

(3) The processing rate of the approved vessel vapor processing system, if one is used to process the vapor collected during the transfer operations.

(e) The pressure in the vapor space of any cargo tank connected to the vapor collection line on either the vessel receiving cargo or the vessel discharging cargo must not exceed 80 percent of the lowest setting of any pressure relief valve during ballasting or cargo transfer.

(f) Impressed current cathodic protection systems must be de-energized during cargo transfer operations.

(g) Tank washing is prohibited unless the cargo tanks on both the vessel discharging cargo and the vessel receiving cargo are inerted, or the tank is isolated from the vapor collection line.

Subpart 39.5000—Multi-breasted Loading Using a Single Facility Vapor Connection

§ 39.5001 General requirements for multi-breasted loading—B/CLBR.

(a) Each barge must be owned and operated by the same entity and must have an approved vapor control system (VCS).

(b) The crossover vapor hose must—

(1) Be marked in accordance with 46 CFR 39.2001(h);

(2) Meet the qualifications of 46 CFR 39.2001(i);

(3) Not extend more than 7.62 meters (25 feet) between two barges during transfer operations; and

(4) Have a diameter at least as large as the diameter of the largest pipe in the VCS on the outboard barge.

(c) The hazards associated with barge-to-barge or barge-to-shore electric currents must be controlled in accordance with sections 11.9 or 17.5 of OCIMF ISGOTT (incorporated by reference, *see* 46 CFR 39.1005).

(d) The cargo transfer procedures must reflect the procedures to align and disconnect a facility VCS to and from an inboard barge, and alternately, to and from an outboard barge through the vapor cross-over hose and the inboard barge's vapor header, or "dummy" header. This must include proper connections for the facility VCS's alarm/shutdown system to the alarm/shutdown system of the barge being loaded at the time.

(e) Barge owners and operators must comply with any additional operational requirements imposed by the local Captain of the Port (COTP) in whose zone the shore facility is located. The barge owner or operator must identify the specific facilities at which a multi-breasted loading operation will be conducted and provide the Commandant with a list of these facilities. These facilities must be certified for conducting such an operation.

§ 39.5003 Additional requirements for multi-breasted loading using an inboard barge vapor collection system—B/CLBR.

(a) Each barge must have at least one liquid overfill protection system that fulfills the requirements of 46 CFR 39.2009.

(b) The vapor header of an inboard barge that is used during outboard barge loading must—

(1) Be aligned with the vapor header of the outboard barge;

(2) Have a diameter at least as large as the diameter of the largest pipe in the vapor collection system of the outboard barge; and

(3) Be marked in accordance with 46 CFR 39.2001(h).

(c) A licensed tankerman, trained in and familiar with multi-breasted loading operations, must be onboard each barge during transfer operations. The tankerman serves as the barge person-in-charge (PIC). During transfer operations, the barge PICs must maintain constant communication with each other as well as with the facility PIC.

(d) If multi-breasted loading will be conducted using more than one liquid transfer hose from the shore facility, the facility must be capable of activating the emergency shutdown system required by 33 CFR 154.550. This will automatically stop the cargo flow to each transfer hose simultaneously, in the event an upset condition occurs that closes the remotely operated cargo vapor shutoff valve in the facility's vapor control system. Multi-breasted loading is prohibited unless the shore facility can comply with this requirement.

§ 39.5005 Additional requirements for multi-breasted loading using a "dummy" vapor header–B/CLBR.

(a) Each inboard barge "dummy" header used during outboard barge loading must—

(1) Be aligned with the vapor header of the outboard barge;

(2) Have a diameter at least as large as the diameter of the largest pipe in the vapor collection system of the outboard barge;

(3) Be marked in accordance with 46 CFR 39.2001(h); and

(4) Meet the same design and installation requirements for the vapor collection piping onboard the same barge.

(b) Flanges must meet the same design and installation requirements for flanges in the vapor collection system onboard the same barge.

(c) A stud must be permanently attached, as required in 46 CFR 39.2001(j), to the vapor connection flange on the "dummy" header.

Subpart 39.6000—Tank Barge Cleaning Operations with Vapor Collection

§ 39.6001 Design and equipment of vapor collection and stripping systems—B/ALL.

(a) Each barge engaged in cleaning operations at an approved cleaning facility must have a conductive fixed stripping line installed in each cargo tank. The line must extend to the low point of each cargo tank, extend through and be welded to the top of the cargo tank, and terminate above deck with a full port valve plugged at the open end.

(b) An existing fixed stripping system may be used instead of the stripping line required in paragraph (a) of this section.

(c) Each stripping line must be labeled at an on-deck location with the words "Stripping Line-Tank," followed by the tank's number, name, or location.

(d) Vapors may be collected from the barge's cargo tanks through a common fixed vapor header, through the fixed liquid cargo header, or through flanged flexible hoses located at the top of each cargo tank.

(e) The vapor collection system must not interfere with the proper operation of the cargo tank venting system.

(f) A barge being gas-freed by a fluid displacement system must fulfill the following requirements:

(1) If the fluid medium is a compressible fluid, such as inert gas, it must be injected into the barge's cargo tanks through a common fixed vapor header, through the fixed liquid cargo header, or through flanged flexible hoses located at the top of each cargo tank;

(2) If the fluid medium is a non-compressible fluid, such as water, it must be injected into the barge's cargo tanks through the fixed liquid cargo header only; and

(3) If the fluid medium is a non-compressible fluid, such as water, the barge must be equipped with a liquid

overfill protection arrangement and fulfill the requirements for tank barge liquid overfill protection contained in 46 CFR 39.2009.

(g) The barge vapor connection must be electrically insulated from the facility vapor connection and the fluid injection connection must be electrically insulated from the fluid injection source, if fitted, in accordance with OCIMF ISGOTT section 17.5 (incorporated by reference, *see* 46 CFR 39.1005).

(h) Vapor collection piping must be electrically bonded to the barge hull and must be electrically continuous.

(i) All equipment used on the barge during cleaning operations must be electrically bonded to the barge and tested to ensure electrical continuity prior to each use.

(j) Hoses used for the transfer of vapors during cleaning operations must meet the requirements of 46 CFR 39.2001(i) and have markings as required in 46 CFR 39.2001(h).

(k) Hoses used for the transfer of liquids during cleaning operations must—

(1) Have a designed burst pressure of at least 600 pounds per square inch gauge (psig);

(2) Have a maximum allowable working pressure of at least 150 psig;

(3) Be capable of withstanding at least the maximum vacuum rating of the cleaning facility's vapor-moving device without collapsing or constricting;

(4) Be electrically continuous with a maximum resistance of 10,000 ohms;

(5) Have flanges with a bolthole arrangement complying with the requirements for 150 pound class ANSI B16.5 flanges (incorporated by reference, *see* 46 CFR 39.1005); and

(6) Be abrasion and kinking resistant and compatible with the liquids being transferred.

(l) If a hose is used to transfer either vapor or liquid from the barge during cleaning operations, hose saddles that provide adequate support to prevent the collapse or kinking of hoses must accompany hose handling equipment.

§ 39.6003 Underpressure protection during stripping and gas-freeing operations—B/ALL.

(a) The cargo tank venting system required by 46 CFR 32.55 must not exceed the maximum design working pressure or the maximum design vacuum for the cargo tank.

(b) Each barge must be fitted with a means for connecting the pressure-sensing and pressure-indicating devices required by 33 CFR 154.2203 on each cargo tank top. The valve connection point must be labeled "Pressure Sensor Connection".

(c) For stripping operations with closed cargo tanks, the maximum stripping rate must not exceed the volumetric flow capacity of the vacuum relief valve protecting the cargo tank.

§ 39.6005 Inspection prior to conducting gas-freeing operations—B/ALL.

(a) The following inspections must be conducted by the barge person in charge prior to commencing gas-freeing operations, and show that—

(1) Each part of the barge's vapor collection system is aligned to allow vapor to flow to a cleaning facility's vapor control system (VCS);

(2) If a fluid displacement system is used to conduct gas-freeing operations—

(i) The fluid supply line is connected to the fluid injection connection; and

(ii) The maximum fluid injection rate is determined in accordance with 46 CFR 39.6007(c)(2);

(3) The maximum stripping or gas-freeing rate is determined in accordance with 46 CFR 39.6003(c) or 39.6007(c), respectively, and adequate openings required by 46 CFR 39.6007(c)(1) are available and identified;

(4) The pressure-sensing and pressure-indicating devices required by 33 CFR 154.2203 are connected as required by 46 CFR 39.6003(b);

(5) The maximum and minimum operating pressures of the barge being cleaned are determined;

(6) Unrepaired loose covers, kinks, bulges, gouges, cuts, slashes, soft spots, or any other defects which would permit the discharge of vapors through the vapor recovery hose material must be detected during inspection and repaired prior to operation;

(7) The facility vapor connection is electrically insulated from the barge vapor connection and the fluid injection connection is electrically insulated from the fluid injection source, if fitted, in accordance with OCIMF ISGOTT section 17.5 (incorporated by reference, *see* 46 CFR 39.1005); and

(8) All equipment is bonded in accordance with 46 CFR 39.6001(h).

§ 39.6007 Operational requirements for tank barge cleaning—B/ALL.

(a) During cleaning operations, vapors from a tank barge cannot be transferred to a cleaning facility which does not have a marine vapor control system (VCS) certified by a certifying entity, and its facility operations manual endorsed by the Captain of the Port (COTP) as meeting the requirements of 33 CFR part 154, subpart P.

(b) Prior to commencing stripping operations, the maximum allowable stripping rate must be determined. The maximum allowable stripping rate must not exceed the volumetric flow capacity of the vacuum relief valve protecting the cargo tank.

(c) The maximum gas-freeing rate is determined by the following:

(1) For a vacuum displacement system:

(i) The maximum allowable gas-freeing rate is a function of the area open to the atmosphere for the cargo tank being gas-freed. The area open to the atmosphere must be large enough to maintain the pressure in the cargo tank being gas-freed at or above 14.5 pounds per square inch absolute (psia) (-0.2 pounds per square inch gauge (psig));

(ii) The maximum allowable gas-freeing rate must be calculated from Table 1 of this section, using the area open to the atmosphere for the cargo tank being gas-freed as the entering determination;

(2) For a fluid displacement system, the maximum allowable gas-freeing rate is determined by the lesser of the following:

(i) Eighty percent of the total venting capacity of the pressure relief valve in the cargo tank venting system when relieving at its set pressure;

(ii) Eighty percent of the total vacuum relieving capacity of the vacuum relief valve in the cargo tank venting system when relieving at its set pressure; or

(iii) The rate based on pressure drop calculations at which, for a given pressure at the facility vapor connection, the pressure in the cargo tank being gas-freed exceeds 80 percent of the setting of any pressure relief valve in the cargo tank venting system.

(d) Any hatch and/or fitting used to calculate the minimum area required to be open to the atmosphere must be opened and secured in such a manner as to prevent accidental closure during gas freeing. All flame screens for the hatch and/or fitting opened must be removed in order to allow for maximum airflow. The hatch and/or fitting must be secured open before the pressure in the cargo tank falls below 10 percent of the highest setting of any of the barge's vacuum relief valves.

(e) "Do Not Close Hatch/Fitting" signs must be conspicuously posted near the hatch and/or fitting opened during gas-freeing operations.

(f) To minimize the dangers of static electricity, all equipment used on the barge during gas-freeing and cleaning operations must be electrically bonded to the barge and tested to ensure electrical continuity before each use.

(g) If the barge is equipped with an inert gas system, the inert gas main isolation valve must remain closed during cleaning operations.

(h) Vapors from incompatible cargoes that are collected simultaneously must be kept separated throughout the barge's entire vapor collection system. Chemical compatibility must be determined in accordance with the procedures contained in 46 CFR 150, part A.

TABLE 1 TO § 39.6007—MINIMUM OPEN AREA FOR BARGE CLEANING HATCHES

Air flow (CFM) (cubic feet/minute)	Air flow (CFS) (cubic feet/second)	Open area (square inches)	Diameter opening (inches)	Square opening (inches)
500	8.3	10.7	3.7	3.3
600	10.0	12.8	4.0	3.6
700	11.7	15.0	4.4	3.9
800	13.3	17.1	4.7	4.1
900	15.0	19.3	5.0	4.4
1000	16.7	21.4	5.2	4.6
1100	18.3	23.6	5.5	4.9
1200	20.0	25.7	5.7	5.1
1300	21.7	27.8	6.0	5.3
1400	23.3	30.0	6.2	5.5
1500	25.0	32.1	6.4	5.7
1600	26.7	34.3	6.6	5.9
1700	28.3	36.4	6.8	6.0
1800	30.0	38.5	7.0	6.2
1900	31.7	40.7	7.2	6.4
2000	33.3	42.8	7.4	6.5
2100	35.0	45.0	7.6	6.7
2200	36.7	47.1	7.7	6.9
2300	38.3	49.3	7.9	7.0
2400	40.0	51.4	8.1	7.2
2500	41.7	53.5	8.3	7.3
2600	43.3	55.7	8.4	7.5
2700	45.0	57.8	8.6	7.6
2800	46.7	60.0	8.7	7.7
2900	48.3	62.1	8.9	7.9
3000	50.0	64.2	9.0	8.0
3100	51.7	66.4	9.2	8.1
3200	53.3	68.5	9.3	8.3
3300	55.0	70.7	9.5	8.4
3400	56.7	72.8	9.6	8.5
3500	58.3	75.0	9.8	8.7
3600	60.0	77.1	9.9	8.8
3700	61.7	79.2	10.0	8.9
3800	63.3	81.4	10.2	9.0
3900	65.0	83.5	10.3	9.1
4000	66.7	85.7	10.4	9.3

§ 39.6009 Barge person in charge: Designation and qualifications—B/ALL.

The designation and qualification requirements contained in 33 CFR 155.700 and 33 CFR 155.710(a)(2) apply to the barge person in charge.

Dated: October 4, 2010.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2010–25384 Filed 10–20–10; 8:45 am]

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Part IV

Department of Housing and Urban Development

24 CFR Part 905
Use of Public Housing Capital Funds for Financing Activities; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 905

[Docket No. FR–4843–F–02]

RIN 2577–AC49

Use of Public Housing Capital Funds for Financing Activities

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements a program to allow public housing agencies (PHAs) to use proceeds of their Capital Fund program for financing activities, including payment of debt service and housing development and modernization activities. A PHA may grant a security interest in future Capital Fund grants, subject to the appropriation of those funds by Congress. This final rule follows a July 18, 2007, proposed rule that addressed the use of public housing Capital Funds and Operating Funds for financing activities, and takes into consideration the public comments received on that rule.

This final rule addresses only the use of public housing Capital Funds for financing activities. Given the public comment received on the proposed rule, HUD determined that further consideration must be given to HUD's proposal for use of operating funds for financing activities. The final rule makes changes to the proposed rule in response to public comments, including a streamlined approval process for standard and high-performing PHAs that have borrowings against their Capital Funds within certain limits, or that propose to use their Capital Fund financing proceeds in a mixed-finance development. The final rule, also in response to comment, provides greater specificity than the proposed rule with respect to submission requirements for requests for Capital Fund financing transactions.

DATES: *Effective date:* December 20, 2010.

FOR FURTHER INFORMATION CONTACT: Jeffrey Riddel, Director, Office of Capital Improvements, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000; telephone number 202–708–1640, extension 4999 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9 of the U.S. Housing Act of 1937 (1937 Act) (42 U.S.C. 1437g) states that Capital Funds can be used for activities including "development, financing, and modernization" (*see* 42 U.S.C. 1437g(d)(1)(A)). Section 30 of the 1937 Act provides that HUD may authorize a PHA to mortgage or otherwise grant a security interest in any public housing project or other property of the PHA upon such terms and conditions as the Secretary may prescribe. (*See* 42 U.S.C. 1437g(g), which sets limitations on the use of Capital Funds.)

Under section 9(g)(3)(A) of the 1937 Act (42 U.S.C. 1437g(g)(3)(A)), Capital Funds may not be used for new construction of housing units if such construction would result in a net increase from the number of public housing units owned, assisted, or operated by the PHA on October 1, 1999. There are two exceptions to this statutory requirement. First, section 9(g)(3)(B) of the 1937 Act (42 U.S.C. 1437g(g)(3)(B)) provides an exception for units that are affordable for low-income families in excess of this limitation, but the Capital Fund formula shall not provide additional funding for the specific purpose of construction and operation of housing in excess of this limitation. Second, section 9(g)(3)(C) of the 1937 Act (42 U.S.C. 1437g(g)(3)(C)) provides an exception to the Capital Fund formula limitation for the operation and modernization of mixed-finance housing, or housing that otherwise leverages significant other investment, if the estimated cost of the useful life of the project is less than the estimated cost of providing tenant-based section 8 assistance for the same period of time.

In any financing transaction that involves pledges of future appropriations of Capital Funds, the Antideficiency Act (31 U.S.C. 1431) applies. The Antideficiency Act states, in relevant part, as follows: "An officer or employee of the United States Government or of the District of Columbia government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation; involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law. * * *"

Because funds cannot be obligated in advance of an appropriation being made, any financing commitments based on Capital Fund expenditures over a period of years must explicitly be made subject to the availability of appropriated funds.

More detailed information regarding the background of this rulemaking, including HUD's initial proposal, can be found in the preamble of the proposed rule published on July 18, 2007, at 72 FR 39546–39547.

II. This Final Rule

As noted in the "Summary" of this final rule, the proposed rule published on July 18, 2007, addressed the use of both public housing Capital Funds and Operating Funds for financing activities; this final rule proceeds to promulgate regulations for the Capital Fund Financing Program (CFFP) only. Public comments raised issues on the Operating Fund Financing Program (OFFP) component of the July 18, 2007, proposed rule, such that HUD determined further consideration must be given to those comments before promulgating final regulations on the OFFP component. HUD, however, is ready to proceed with issuing final regulations for the Capital Fund component of the July 18, 2007, proposed rule.

Some of the key changes made to the CFFP component at this final rule stage include the following:

- The entire section is recodified as subpart E of part 905, and section numbers redesignated accordingly, so that, for example, proposed § 905.700 is in this final rule § 905.500.
- This final rule permits PHAs to pledge up to 100 percent of their replacement housing factor (RHF) funds for debt service, provided that such pledge constitutes no more than 50 percent of the PHA's combined future Capital Funds (*i.e.,* formula funds and RHF funds). Acceleration of Capital Fund-financed debt is allowed, but only with HUD approval. HUD will allow PHAs to pledge 100 percent of their RHF due, in part, to the fact that the maximum term that PHAs can underwrite RHF for is 10 years, which is the maximum period of time a PHA can receive a tier of RHF. This is half the maximum term of 20 years permitted where PHAs pledge Capital Fund formula funds for the payment of debt service, and therefore considerably more conservative. The 50 percent cap is being established to limit the amount of RHF funds that PHAs can pledge. This limitation will be triggered for those PHAs where RHF makes up such a significant portion of their overall Capital Fund that the pledge will cause the total amount pledged to exceed 50

percent of the PHA's combined future Capital Funds and RHF funds. The table below provides examples of the potential impact of the 50 percent cap.

	Capital fund formula grant	RHF grants	Total capital fund grants	Max debt service from capital fund grants (50% of total)	Debt service from RHF grants	Debt service from formula grant	Total debt service
Scenario 1	$5,000	$500	$5,500	$2,750	$500	$1,667	$2,167
Scenario 2	1,000	500	1,500	750	500	250	750
Scenario 3	500	500	1,000	500	500	0	500
Scenario 4	200	500	700	350	350	0	350

(1) In Scenario 1, because the RHF is much less than the Capital Fund formula grant, the PHA can leverage 100 percent ($500) of its projected RHF and 33 percent ($1,667) of its projected Capital Fund formula grants.

(2) In Scenario 2, the 50 percent cap is triggered. The PHA will leverage 100 percent ($500) of its projected RHF, but may leverage no more than 25 percent ($250) of its projected Capital Fund formula grants because borrowing more would exceed the 50 percent cap.

(3) In Scenario 3, the 50 percent cap is triggered. The PHA will be able to leverage 100 percent ($500) of its RHF, but will not be able to leverage any Capital Fund formula grants because borrowing more would exceed the 50 percent cap.

(4) In Scenario 4, the 50 percent cap is triggered. The cap results in the PHA being able to use only a portion of its RHF and none of its Capital Funds formula grants for debt service because borrowing more would exceed the 50 percent cap. This is due to the fact that the Capital Fund formula grants represent only a small portion of the PHA's overall funding.

• Where the proposed rule would have permitted PHAs to pledge "more than" 33 percent of its projected future annual Capital Fund grants for debt service upon a showing to HUD that the PHA has sufficient Capital Fund grants to meet its needs, it was silent on the issue of existing grants. The final rule makes explicit that PHAs may pledge up to 33 percent of its future Capital Fund grants, and may pledge 100 percent of its RHF grants, provided that such pledge constitutes no more than 50 percent of the PHA's combined future Capital Funds (*i.e.,* formula grant funds and RHF funds). Subject to a reasonableness test, PHAs may pledge more than 33 percent of their existing Capital Fund grants.

• A streamlined procedure is provided for mixed-finance proposals and Capital Fund Financing Proposals from PHAs: (1) That are standard or high performers under the Public Housing Assessment System (PHAS) and have cumulative CFFP transactions of less than $2 million, or (2) that are high PHAS performers and have cumulative CFFP transactions of less than $20 million. For standard or high performing PHAs, management assessments under the following regulations—24 CFR 905.505(e), fairness opinions under 24 CFR 905.505(k), and demonstration of construction management and financial controls under 24 CFR 905.505(l)—may not be required as part of the Capital Fund Financing Proposal. HUD retains the discretion to require assessments, opinions, or controls in certain cases. In addition, physical needs assessments and quarterly reporting have been removed as requirements for PHAs that use the CFFP in mixed-finance transactions, and for PHAs that size their CFFP based only upon the projected receipt of RHF. Finally, as part of its processing of Capital Fund Financing Proposals on a case-by-case basis, HUD had been requiring PHAs to include in their cover letter the status of other HUD approvals needed to utilize CFFP proceeds, such as the approval of development proposals where the proceeds are proposed to be used for development. This final rule removes that information as a required part of the Capital Fund Financing Proposal. In the future, HUD will make the determination of required approvals based upon the PHA's description of the proposed use of proceeds. HUD will condition any CFFP Financing approvals upon the receipt of any other HUD approvals needed to use the proceeds.

• In response to comments to clarify the requirements of a Capital Fund Financing Proposal in the rule, and limit the number of requirements for PHAs to make submittals in accordance with terms and conditions as determined by HUD, § 905.510(b) is revised to list the submittal requirements for a Capital Fund Financing Proposal. The Capital Fund Financing Proposal requirements as presented in this final rule are based upon the proposal requirements for the program as it is currently being implemented on a case-by-case basis. In addition to the streamlining for certain transactions referenced above, changes in this final rule from what HUD has required on a case-by-case basis for all proposals include: (1) The cover letter is no longer required to include a narrative on the status of ancillary approvals required to use the CFFP proceeds; and (2) an effective cost of financing schedule is no longer required to be submitted as part of the CFFP Financing Proposal.

• The 40-year use restriction in section 9(d)(3) of the 1937 Act (42 U.S.C. 1437g(d)(3)) is stated at § 905.505(c). This section follows the statutory language and provides for exceptions as "provided in" the 1937 Act. Such exceptions would include, for example, demolition of obsolete units under section 18 of the 1937 Act (42 U.S.C. 1437p) and required conversion under section 33 of the 1937 Act (42 U.S.C. 1437z–5).

• The required contents of the transmittal letter under 24 CFR 905.510(b)(1) are specified. The letter must contain a description of the proposed financing and use of proceeds, the percentage of Capital Funds being dedicated to debt service, the percentage of the PHA's public housing units benefiting from the financing the impact of the financing on the public housing portfolio, and any additional information that may be required.

• Financing schedules, including debt service and sources and uses, are required by § 905.510(b)(3) of this final rule.

• A Capital Fund Plan currently consisting of a CFP Annual Statement/ Performance and Evaluation Report (form HUD–50075.1, and CFP 5-Year Action Plan (form HUD–50075.2) are described in § 905.505(h) and (n). The PHA must provide evidence that the PHA has conformed to the requirements related to the Declaration of Trust (DOT) as described in § 905.505(c)(4) and mentioned in § 905.510(b)(6).

• The PHA must provide a board resolution authorizing the PHA to finance a loan up to a specified amount, to provide all the security interests required by the loan, and authorizing the Executive Director of the PHA to

negotiate and execute required legal documents as required by § 905.510(b)(7).

- The PHA must provide an opinion of counsel stating that the PHA has authority to enter into the transaction and that the transaction complies with the 1937 Act, Federal regulations, and the applicable Annual Contributions Contract (ACC) as described in § 905.510(b)(7).
- If a PHA is proposing direct debt service payments through HUD's Line of Credit Control System (LOCCS), the PHA must execute a Capital Fund Financing Amendment to the ACC as required by § 905.510(b)(8).

III. Summary of Public Comments

The public comment period closed on September 17, 2007, and HUD received 21 public comments. HUD received public comments from a variety of sources, including private citizens, six PHAs, three trade associations, four law firms, and several housing development consultants. A summary of the issues raised and HUD's responses to these issues are as follows.

Comment: The proposed rule will not succeed as long as the Operating Fund and Capital Fund are so severely underfunded.

Response: These comments concern appropriation levels, and are therefore outside of the scope of this rule. Furthermore, there exists a multiplicity of sources that PHAs can combine with Capital Funds to help meet the needs of their public housing portfolio. These include public housing sources, such as energy performance contracts, as well as nonpublic housing sources such as low income housing tax credits (LIHTCs), funds from the Federal Home Loan Banks' Affordable Housing Program, and local funds. Creative, proactive housing authorities can utilize Capital Funds and Capital Fund financing in conjunction with other sources to meet the needs of their public housing portfolios.

In regard to the Operating Fund, HUD received many comments from respondents that, at current levels of pro-ration, the OFFP is not feasible. These comments warrant careful consideration. In order to provide the level of rigor necessary to meaningfully respond to the comments received on the OFFP, and yet not encumber the processing of the CFFP rule, HUD has decided to decouple the processing of the CFFP rule from the OFFP rule.

Comment: Private lenders must accept the risk of continued and sufficient congressional appropriations to pay off the debt. Given the uncertain level of congressional funding for the Capital Fund and Operating Fund programs, lenders will likely charge higher fees and impose additional credit enhancements or performance standards, resulting in higher costs to finance capital improvements.

Response: While it is true that the Antideficiency Act (31 U.S.C. 1431) requires all future-year financing to be subject to the availability of appropriations, investors have developed a level of comfort with the CFFP. Certainly, the CFFP has been more stable than other similar investments in the recent past. Since HUD began implementing the CFFP in 2000, rates have remained remarkably stable. The CFFP has been structured in a way so that most transactions receive unenhanced, underlying AA [1] ratings from Standard & Poor's. Other costs for CFFP transactions have been comparable to similar financing mechanisms in the marketplace. While investor perception may change if appropriations decrease below current levels, to date the CFFP has provided a financing tool with pricing similar to financing options available to HUD's multifamily portfolio.

Comment: The process for approving Capital Fund financing arrangements is too extensive and cumbersome and may require an entire year or more from planning through closing. Commenters made recommendations to simplify the approval process by making it similar to that of mixed-finance housing programs; to eliminate the requirement for a fairness opinion for transactions borrowing less than $2 million; to eliminate the requirement for third-party management reviews as duplicative and costly; and to eliminate management assessments for any transaction where the Capital Funding being financed is less than $20 million, and the PHA is not classified as a poor-performing PHA.

Similarly, several commenters stated that PHAs have experienced delays in getting HUD approvals and that these delays add costs or may negatively impact the deals. These commenters recommended that HUD establish clear time frames for the review and approval process, recommending a range of dates such as 30, 45, or 60 days. The commenters all noted that clear timelines will improve the willingness of private partners to enter into these transactions.

Response: HUD initially implemented the CFFP on a case-by-case basis, to allow maximum flexibility in initial implementation of the program, and provide PHAs and HUD an opportunity to learn from collective experience at the inception of the program. However, one of the consequences of this approach was that the process of reviewing and approving transactions took longer than HUD believes would have otherwise been the case if HUD had initiated implementation of the program through rulemaking. HUD believes that rulemaking will make implementation more standardized and consistent, but, if done earlier, might have hampered the ability to more expeditiously implement changes during the early evolution of the program. HUD now has sufficient experience both to implement rulemaking, and to ensure a more streamlined review process. Reviews now take approximately 2 to 3 months on average, the same length of time as in the Mixed-Finance Development Program, for which HUD's regulations are found in 24 CFR part 941, subpart F. However, there continue to exist opportunities to further streamline the process and make it more efficient.

This final rule therefore makes the following streamlining changes:

(1) The rule removes the effective cost of financing schedule as a program requirement. HUD will continue to make this tool available to PHAs as a mechanism whereby they can complete an "apples-to-apples" comparison of different financial structures. Nonetheless, PHAs remain obligated pursuant to 2 CFR part 225 (cost principals for state, local, and Tribal governments, OMB Circular A–87) to assure the cost reasonableness of their financial transactions, and the reasonableness of the proposal remains a requirement for approval.

(2) Management assessments (proposed § 905.705(e)), fairness opinions (proposed § 905.705(k)), and information about financial and construction management controls (proposed § 905.705(l)) are no longer required where Capital Fund Financing Proposals being pursued as part of mixed-finance transactions, the PHA is a standard or high performer under PHAS and is undertaking a CFFP transaction of less than $2 million cumulatively, or the PHA is a high performer under PHAS and is undertaking less than $20 million in cumulative CFFP transactions. HUD retains the discretion to require assessments, opinions, or controls in

[1] In the Standard & Poor's rating system, an AA rating is the second-highest rating (AAA being the highest), and indicates that the obligor's capacity to meet its financial commitment on the obligation is very strong. Unenhanced, underlying ratings refer to debt obligations not supported by financial guarantees, structuring techniques, multiple-party features, or other external credit support. *See http://www.standardandpoors.com.*

certain cases. The removal of submittal requirements for financial and construction management controls applies only to the demonstration of such controls within the Capital Fund Financing Proposal itself. PHAs still must adhere to public housing requirements in regard to the use of CFFP proceeds.

(3) Proposed § 905.705(c)(5) (final § 905.505(c)(4)) has been modified for CFFP use with a mixed-finance project such that the evidence of Declarations of Trust (DOTs) will be part of the mixed-finance evidentiary approval process.

(4) Proposed § 905.705(h)(2) (final § 905.505(h)(2)) has been modified to remove the requirement for the submission of a budget detailing the use of CFFP proceeds for certain PHAs. This requirement has been eliminated for PHAs that size their loans based only upon RHF funds, as well as those that use the CFFP proceeds as part of a mixed-finance transaction. CFFP approval letters for these transactions will be conditioned upon the approval of the related development proposal.

(5) Proposed § 905.705(p) (final § 905.505(p)) has been revised to eliminate quarterly reporting requirements under this program where the CFFP proceeds are being used as part of a mixed-finance transaction, and for PHAs that size their transactions based only upon RHF funds.

(6) This final rule removes proposed § 905.710(b)(4). Proposed § 905.710(b)(4) would have requested redundant information.

Comment: HUD's submission and reporting requirements for this program are excessive. Commenters stated that HUD is bringing fewer resources to the project but is imposing requirements as though funding the entire project. They recommended that HUD reporting requirements be proportional to its financial stake in the project and that they reflect a more business-like approach to partnering with the private sector.

Response: This final rule reduces reporting requirements for PHAs that combine CFFP with mixed-finance projects. PHAs that pursue mixed-finance projects have both HUD and investor reporting requirements associated with the mixed-finance transaction, and HUD agrees that the CFFP reporting requirements could be reduced. In fact, this final rule streamlines those requirements, as described above in the preamble.

However, for non-mixed-finance projects, quarterly reporting is still necessary. Unlike Capital Funds, CFFP proceeds do not appear in the Line of Credit Control System (LOCCS). Therefore, quarterly reports are the only mechanism at HUD's disposal by which it can monitor the project.

Comment: Several items in the rule provide that requirements must be accomplished by the PHA "in a form and manner to be determined by HUD" or that additional "terms and conditions" may be determined by HUD. HUD should work with PHAs and other outside parties to clarify these points before the rule is published as a final rule.

Response: HUD agrees with the comment that a clearly defined set of rules will result in a more efficient process for assembling Capital Fund Financing Proposals, and for HUD's review of those proposals. Since the Capital Fund Financing Proposal process which HUD has implemented on a case-by-case basis is a defined process with known submittal requirements, this final rule revises § 905.710 (now § 905.510 in the final rule) to state the general submittal requirements, while retaining HUD's administrative discretion in approving Capital Fund Financing Proposals that may present unique or complex financing for modernization and development.

This final rule revises § 905.510(b)(1) to describe in more detail the requirements for the transmittal letter and § 905.510(b)(2) to provide the requirement for incorporating a table of contents and contact information in the proposal. This final rule also revises § 905.510(b)(3) to reflect the required financing schedules that must be submitted. These include the debt service schedule, sources and uses schedule, and portfolio schedule. The effective-cost-of-financing schedule was dropped as a submittal requirement, although HUD will continue to make it available on its Web site to assist PHAs in assessing the overall financial costs of different financial structures.

This final rule revises § 905.510(b)(4) to summarize other submittal items required pursuant to proposed § 905.705 that were not delineated elsewhere in proposed § 905.710. New § 905.510(b)(6) incorporates the requirement for evidence regarding DOTs. New § 905.510(b)(7) incorporates the requirement for a board resolution and a counsel's opinion. New § 905.510(b)(8) states the requirement for a Capital Fund Financing Amendment to the ACC be executed as part of the CFFP transaction. This final rule revises proposed § 905.705(j) to specify requirements associated with variable rate transactions. This final rule also revises proposed § 905.705(n) (final § 905.505(n)) to state specific additional requirements that are also included in the Capital Fund Financing Amendment to the ACC.

Comment: HUD should establish safe harbors for financing transactions with Capital Funds. Such safe harbors could include: The PHA has not been designated as troubled, the PHA has not defaulted on loan or obligations secured by Capital Funds, the PHA has described the proposed transaction in its PHA plan, the PHA pledges no more than one-third of its annual allocation of Capital Funds under section 9(d) of the 1937 Act, the PHA is in compliance with obligation and expenditure requirements under section 9(j) of the 1937 Act, and the PHA submits a fairness opinion of an independent qualified third party.

Response: Cost controls and safe harbor standards work well for transactions where industry norms are established and readily identifiable and few variations are expected, such as with development or management fees. Financing does not lend itself to such standards being established. Interest rates change daily. As recent events in the area of mortgage financing have demonstrated, the financial markets, including the home financing market, can be turbulent, if not volatile. Safe harbor standards are simply not workable in this environment.

Instead of safe harbor standards, the CFFP establishes a requirement for an independent third-party fairness opinion, with certain exceptions where there are other indications of reduced risk. The requirement for a fairness opinion, as opposed to cost control and safe harbor standards, permits HUD to maintain flexibility in implementing the program. This approach allows PHAs to structure financial transactions that best meet their needs, provided that the fairness opinion establishes that the transaction is fair and reasonable given current market conditions.

HUD believes that the streamlining process introduced in this rule (and described elsewhere in this preamble) will also assist with the issue. HUD's review process for complete Capital Fund Financing Proposals now averages approximately 2 to 3 months, and this shorter process time should allow PHAs to lower costs and respond to market conditions, which HUD believes is a better solution than safe harbor standards for this purpose.

Comment: The rule will provide little assistance to small PHAs. HUD should consider other forms of incentive to assist those PHAs.

Response: HUD recognizes and appreciates that the relative cost of financing is more expensive for smaller

PHAs. As a result, HUD has revised the rule to streamline procedures for smaller PHAs based on the size of their financings.

For those PHAs that are standard or high performers with cumulative borrowings of less than $2 million, the requirement for the submission of management assessments and fairness opinions, and a demonstration of construction management and financial controls is limited. HUD reserves the right to require a fairness opinion or return the proposal if financing costs are outside of what HUD considers anticipated norms. This streamlining should assist small PHAs in reducing the costs of financing.

Comment: The proposed rule refers to mortgaging public housing properties under section 30 of the 1937 Act (42 U.S.C. 1437z–2), but does not establish regulations for mortgaging public housing property. HUD should implement provisions related to mortgaging public housing property. Also, in implementing section 30 of the 1937 Act, HUD should allow PHAs to subordinate the DOT. Otherwise, the rule risks devaluing PHA real estate and destroying the potential utility of section 30 of the 1937 Act. Other comments stated that HUD should remove this authority. One commenter states that the authority is not needed and lenders might unnecessarily require pledges of real estate collateral; another states that the granting of security interests in public housing property other than Capital Funds is already addressed in 24 CFR part 941, subpart F (mixed-finance development).

Response: HUD may provide more detailed guidance to PHAs regarding mortgaging their properties in the future. In the meantime, this final rule does not remove the basic authority to mortgage real property. While it is true that in entering into financing transactions PHAs should aggressively represent their interest with financing providers, the overall success of the CFFP program is demonstrated by the fact that HUD has approved more than $3 billion in CFFP transactions to date. These transactions have been structured on an appropriations-based financing model; that is, where future appropriations, not real estate, represents the security interest provided to lenders. Since the appropriations-based financing approach has been accepted by the housing finance market, lenders will have no basis to unnecessarily demand pledges of real estate collateral.

Comment: The proposed rule missed the opportunity to encourage innovative financing for public housing that is more in line with financing for other rental housing. The rule should allow PHAs to pledge public housing Operating Funds, Capital Funds, rents, and the underlying property. Another commenter remarked that banks evaluate market-rate apartments on their ability to generate sufficient rents to cover expenses and have sufficient funds remaining to cover the debt, and if not, on the ability of the property to generate sufficient sales proceeds to pay off the loan and cover expenses in the event of a foreclosure. That commenter further stated that, given the nature of public housing, lenders cannot view PHAs or their stand-alone projects as market-rate financing, but rather that private and public housing are at opposite ends of the financing spectrum. Other commenters noted that, at current proration levels, PHAs will not have the cash flow necessary to support financing.

Response: HUD recognizes that public housing financing is quite different from financing in the private sector. Since, in operating pro-formas (standard financial projections), changes in revenue have disproportionate impacts on net operating income (NOI), changes in the current appropriations level could cause the NOI to be volatile. The potential for volatility in the NOI, and thus, by extension, the debt coverage ratio, should PHAs undertake conventional NOI-based financing, present additional constraints on adopting a private sector model.

Moreover, the unique regulatory environment in which public housing operates essentially precludes the adoption of a private sector model. While, pursuant to asset management, PHAs must now undertake project-based accounting, except for mixed-finance projects, the public housing property in any PHA's portfolio is all owned by a single legal entity, namely the PHA. This is entirely different than the private sector model, where separate properties are normally owned by distinct legal entities, even if ultimately controlled by an individual or other overarching entity.

Furthermore, HUD has approved more than $3 billion in Capital Fund Financing Proposals involving almost 200 PHAs, many of these amongst the largest PHAs in the country. The CFFP model is based upon a PHA-wide pledge, and is not property specific. Given the nature of the covenants involved in CFFP transactions, it would not be possible for PHAs that have undertaken those transactions to provide mortgages in underlying properties without first refinancing their CFFP debt. Thus, a property-based approach would be further precluded for any PHA that has already undertaken a CFFP.

Comment: Proposed § 905.705(c)(5), which would require that an effective DOT be recorded in the first position, will severely hamper the amount of private funds that can be leveraged, because the lender would discount the value of any land and improvements pledged as security, due to the lender's security interest being subordinate to the DOT.

Response: HUD's experience shows that there is limited value in allowing PHAs to provide security interests in real estate as part of the CFFP. As noted elsewhere, the appropriations-based CFFP program has demonstrated broad market acceptance, as well as strong ratings and attractive pricing from the investment community. The CFFP regularly achieves ratings of AA, which is a similar or better rating than that provided to strong multifamily housing projects, and has been used to leverage substantial funding.

Comment: The rule fundamentally errs in treating borrowings secured by RHF funds as identical to borrowings secured by Capital Funds. There is no reason why the leveraging of RHF funds should be subject to any greater HUD review than the direct expenditure of them. Another commenter stated that HUD should allow for 80 percent pledging of the RHF funds, and allow the market to determine if 80 percent is an acceptable risk.

Response: In general, HUD agrees that CFFP transactions that are sized assuming that only RHF funds will be used for the payment of debt service could be treated differently than CFFP transactions that are underwritten to include formula funds for the payment of debt service. However, generally, transactions that size loans based upon the receipt of RHF funds have always also included formula funds for the payment of debt service. Moreover, transactions that pledge RHF funds have always also included a pledge of formula funds. To date, there has not been a financing transaction involving RHF funds that isolates the remainder of the Capital Fund (*i.e.,* formula funds) from the transaction, for debt service payments or for security purposes. Thus, there is not a clear distinction between the two types of transactions.

Nonetheless, HUD agrees that the rule should allow for different treatment of proposals where the sizing of the loan is based only upon the use of RHF funds for the payment of debt service, if such a transaction occurs. This final rule revises proposed § 905.705(g) (final § 905.505(g)) to provide that

transactions structured in the above-noted manner shall not be required to complete or submit a physical needs assessment as part of their CFFP Financing Proposal.

In addition to the above, while RHF funds and loan proceeds for such transaction must still be identified in schedules in the PHA's CFP Annual Statement/Performance and Evaluation Report and CFP Five-Year Action Plan, those schedules are not required to be submitted as part of the Capital Fund Financing Proposal. This final rule revises proposed § 905.705(h) to remove the requirement for PHAs that size their loans based only upon the future receipt of RHF to submit a budget as part of their Capital Fund Financing Proposal (final § 905.505(h)(2)).

Finally, HUD agrees that RHF funds should be treated differently than formula funds, for underwriting purposes. Therefore, this final rule revises § 905.505(i)(2) (redesignated from proposed § 905.705(i)(2)) to permit PHAs to pledge up to 100 percent of their RHF funds for debt service, provided that this constitutes no more than 50 percent of the PHA's combined Capital Funds (*i.e.,* formula funds and RHF funds). HUD will allow PHAs to pledge 100 percent of their RHF due, in part, to the fact that the maximum term PHAs can underwrite RHF for is 10 years, which is the maximum period of time a PHA can receive a tier of RHF. This is half the maximum term of 20 years permitted where PHAs pledge Capital Fund formula funds for the payment of debt service, and, therefore, considerably more conservative. The 50 percent cap is being established to limit the amount of RHF funds PHAs can pledge in addition to formula Capital Funds. This limitation will be triggered for those PHAs where RHF funds make up a significant portion of their overall Capital Fund such that pledging RHF funds could exceed the 50 percent overall cap.

Comment: One commenter questioned the practical value of proposed § 905.705(i)(1), given that proposed § 905.705(i)(2) permits a PHA to pledge more than 33 percent of its annual Capital Fund grant upon a showing that is essentially duplicative of the physical needs assessment required by proposed § 905.705(g).

Response: HUD agrees that some further explanation of these related sections is necessary. Accordingly, this final rule removes proposed § 905.705(i)(2) and adds § 905.505(i)(3), to make explicit HUD's policy that, as long as it is reasonable to do so, a PHA may exceed 33 percent when pledging its existing Capital Fund grant. The PHA is necessarily more limited as to pledges of future Capital Fund grants because of the possibility of other capital needs arising. This final rule also revises proposed §§ 905.705(i)(1) and 905.705(i)(3) as final §§ 905.505(i)(1) and 905.505(i)(2), to clarify that PHAs may exceed the 33 percent of future projected Capital Funds threshold only if they are utilizing RHF grants to size their financing. These revised sections allow PHAs utilizing RHF funds to exceed 33 percent leverage in their overall future Capital Funds (PHAs are permitted to pledge up to 50 percent of their overall future Capital Fund, including formula funds and RHF funds), in order to leverage up to 100 percent of their RHF funds.

Comment: In the context of a project using an LIHTC, operating agreements and CFP Annual Statement/Performance and Evaluation Reports should allow the use of these funds to pay the annual LIHTC fund investment management fee specified in the respective operating agreement governing the investment of these LIHTC funds in a development or modernization activity. The investment management fee should be specified in the initial operating agreement, should not escalate faster than the consumer price index, and should initially not exceed $8,000 annually.

Response: As a cost of financing, the fee would be a permissible Capital Fund expenditure, provided it is proportional to the ratio of public housing units to non-public housing units in the project.

Comment: The time deadlines for HUD review of documentation should be waived in a mixed-finance development transaction. The rule should permit PHAs to submit executed copies of the required legal documents to HUD when they become available.

Response: Submission of executed closing documents to HUD is required so that HUD may upload the debt service schedule into LOCCS. However, as a business practice for Capital Fund Financing Proposals that are part of mixed-finance transactions, HUD regularly conditions its CFFP approval on the receipt of approval of the mixed-finance program. This final rule revises § 905.715(b)(2) to reflect this business practice. Section 905.515(b)(2), as revised by this final rule, requires closing documents to be submitted within 60 days of the date of HUD's approval letter; that letter sets conditions that must be met prior to closing (rather than using the closing date). HUD continues to make efforts to reduce paper submittal requirements, and now requires that only one hard copy of the Capital Fund Financing Proposal be submitted. The remaining copies can be submitted as electronic copies.

Comment: Given the condition of HUD's information management and program systems, PHAs may be prevented from participating in the CFFP due to erroneous or missing information in HUD's PHAS.

Response: HUD disagrees. The PHAS has consistently provided data in a time frame sufficient to permit the timely conclusion of financing transactions.

Comment: Given the $18 billion backlog of capital needs, it is unreasonable to require PHAs to complete a physical needs assessment at the project level that covers the PHA's entire public housing portfolio before seeking approval of a CFFP or OFFP transaction. No PHA can legitimately demonstrate an ability to address all the capital needs of its stock.

The requirement of a physical needs assessment should be removed and HUD should rely on information in the CFP Annual Statement/Performance and Evaluation Report and CFP Five-Year Action Plan. Rather than conducting a physical needs assessment, PHAs should be required to consider alternative sources of financing. The physical needs assessment should be permissive rather than mandatory.

Proposed § 905.705(g) should be clarified to indicate how current the physical needs assessment must be.

Response: This final rule revises proposed § 905.705(g) to remove the requirement that PHAs demonstrate, based on the physical needs assessment, that they can maintain their public housing portfolio over the term of the financing. Instead, this final rule, responsive to public comments, requires that the PHA demonstrate that the financing will not negatively impact the ability of the PHA to meet the ongoing needs of its public housing portfolio over the term of the financing. In order to make this analysis, PHAs will need to project their future funding, and the demand for that funding from both capital and non-capital activities. PHAs that borrow more than $2 million cumulatively and are not leveraging non-public housing funds must demonstrate that they have considered leveraging. As noted previously, PHAs that size their loans based only upon the receipt of future RHF, or that use their CFFP as part of mixed-finance transactions, are not required to meet the requirements of proposed § 905.705(g) (final § 905.505(g)).

In response to comments that HUD should not require a physical needs assessment at all, but rather require PHAs to seek alternative means of financing, or make the physical needs

assessment permissive, HUD notes that CFFP loans result in PHAs obligating a significant portion of long-term future funding streams to pay off the loans. For this reason, long-term capital planning is an essential part of undertaking the obligations and commitments associated with CFFP financing. However, the underlying point, that PHAs should consider alternative financing sources when structuring their CFFP transactions, is valid, as it maximizes funding for the PHA. Therefore, this final rule revises final § 905.505(g) such that PHAs that borrow in excess of $2 million and do not leverage non-public housing funds must state why the proposed borrowing is appropriate in light of other alternatives available.

In response to the comment that the rule should clarify the timing of the physical needs assessment, at present, the requirements stated in 24 CFR 968.315 apply. PHAs must conduct a new physical needs assessment at least once every 5 years.

Comment: One commenter noted that the rule's prohibition on the use of financing proceeds for central office cost center costs raises numerous questions, including whether the application is a central office or project cost, whether HUD is suggesting that property managers set up affiliates to perform developer duties, and how the project-based requirements would be met if the proceeds were used for predevelopment or new development purposes. Several commenters recommended that proposed § 905.705(h)(4) be eliminated. Another commenter stated that the provisions should be changed to permit PHAs to use CFFP financing proceeds to pay for costs directly incurred by the central office cost center.

Response: The limitation concerning the use of CFFP proceeds for administrative and central office cost center costs effectively precludes PHAs from doubling the amount of Capital Funds that PHAs can use for administrative costs. Currently, and under the revised rules issued pursuant to asset management, administrative and central office cost center costs are eligible costs under the CFFP. Administrative and cost center costs are generally among the first costs set aside by PHAs each year as they budget their use of Capital Funds. Therefore, any Capital Funds used by PHAs to pay debt service will already be the net of administrative or central office cost center costs. Since CFFP debt is repaid from Capital Funds, if the rule permitted PHAs to use CFFP proceeds for these costs as well, the rule would in effect be doubling the ceiling on such use of Capital Funds, by allowing the PHA to take the fee once from the CFFP proceeds, and then a second time from the Capital Funds used to repay the CFFP financing.

PHAs should use their Capital Funds to cover any eligible administrative costs associated with CFFP transactions, within the allowable limits. The rule proposed in § 905.705(h)(4) an exception to the use of CFFP proceeds for administrative costs for mixed-finance projects.

In response to public comments, the final rule revises proposed § 905.705(h)(4) (final § 905.505(h)(5)) to add a clarification that CFFP proceeds may be used, in addition to for the modernization and construction of public housing dwelling units, for the development or modernization of non-dwelling space. However, PHAs that have significant physical needs in their public housing dwellings should take measures to ensure that they meet the test in § 905.505(g) if they propose to use CFFP proceeds for non-dwelling facilities.

This final rule also revises proposed § 905.705(h)(4) (final § 905.505(h)(5)) to clarify that CFFP proceeds may be used to reimburse predevelopment costs only to the extent that those costs were incurred in accordance with regulatory requirements. Section 941.302 limits predevelopment costs for traditional public housing to 3 percent of total development costs. Section 941.612 specifies the process for drawing down funds for predevelopment costs for mixed-finance transactions.

Comment: Individual projects may not be able to fund the debt service, and the asset management project level may change with ongoing demolition, redevelopment, and realignment. As a result, the regulations should be expanded to include a method to use Capital Funds for debt service at the agency level.

Response: This CFFP final rule permits PHAs to size their financing either on the project level, or on an agency level. The pledge of CFFP, however, is at an agency level. Further, this final rule allows PHAs to size their loans based on a pledge of up to 100 percent of their RHF funds (final § 905.505(i)(2)). This revision should provide considerable resources to PHAs that wish to utilize the CFFP to realign their public housing portfolio.

Comment: One commenter recommended that HUD define the term "costs already incurred" in proposed § 905.705(h)(4).

Response: This final rule removes the phrase "cost already incurred" from proposed § 905.705(h)(4) (final § 905.505(h)(5)), and clarifies the language in § 905.505(h)(5) of this final rule to specify that CFFP proceeds may reimburse only predevelopment costs incurred in accordance with regulatory requirements.

Comment: Proposed § 905.705(j)(1) should permit CFFP financing terms anywhere from 30 to 40 years.

Response: Given the nature of appropriations-based financing, terms in excess of 20 years are difficult to support. By way of reference, the restrictive covenant associated with the use of Capital Funds for modernization is limited to 20 years. This final rule revises the language in § 905.505(j)(l) to clarify the limitation of the term to 20 years.

Comment: One commenter recommended that § 905.705(j)(2) be clarified to provide that "any loan with mandatory debt service payments shall have a cap on such payments and shall be self-amortizing." Another commenter recommended that the prohibition on acceleration be removed. The commenter stated that such a restriction could negatively impact the marketability of the program.

Response: All CFFP transactions have mandatory debt service payments, and pursuant to § 905.705(j)(1) they are fully amortizing. HUD's policy in implementing the CFFP has been not to permit acceleration provisions. Given that HUD has approved more than $3 billion in Capital Fund Financing Proposals, there is broad market acceptance of the program, including HUD's policy on acceleration. Nonetheless, there may be circumstances in which a PHA proposes and can justify the inclusion of an acceleration provision in a CFFP transaction. This final rule revises § 905.505(j)(2) to allow for that possibility.

Comment: The requirement for a fairness opinion will add significant expense to a PHA's financing of a new development. Financial markets are competitive and if a PHA has thoroughly "shopped" its financing needs, the PHA will receive a fair and competitive rate. Therefore, this requirement should be removed.

One commenter recommended that HUD require a fairness opinion only if the opinion has a conclusive effect and if redundant determinations regarding commercial fairness will not be made by HUD. Another commenter recommended that the fairness opinion be limited to a determination that the "interest rate, points and costs are reasonable given market conditions."

Response: The requirement for a fairness opinion permits HUD to maintain flexibility in implementing the

program. This approach allows PHAs to structure financial transactions that best meet their needs, provided that the fairness opinion establishes that the transaction is fair and reasonable given current market conditions.

HUD will continue its general requirement to have independent third-party fairness opinions completed. However, this final rule eliminates that requirement for several types of transactions that present a reduced risk. For example, fairness opinions are eliminated for borrowings of less than $2 million, because of the relatively small amount of funds at risk; for high performers up to $20 million, because high performers have a demonstrated ability to effectively implement their public housing program; and in mixed-finance transactions, because PHAs in mixed-finance transactions are generally represented by a strong development team and have increased regulatory oversight under the mixed-finance program. In any of these cases, HUD can require a fairness opinion if the transaction does not meet industry norms. This final rule adds § 905.507(a)(2) to eliminate the requirement for a fairness opinion for standard or high-performing PHAs that have cumulative CFFP transactions of less than $2 million, PHAs that were high performers under PHAS and have cumulative CFFP borrowings of less than $20 million, and PHAs that propose to use their CFFP proceeds as part of a mixed-finance transaction. Notwithstanding these changes, if HUD determines that the interest or other costs are not in line with industry norms, HUD may require a fairness opinion or return the application.

Regarding the request to limit fairness opinions, fairness opinions are already limited to the business terms of financing transactions. As such, they are a low-cost and efficient mechanism for ensuring the reasonableness of the financing terms given current market conditions. HUD does not currently contemplate further reducing the scope of fairness opinions.

Comment: For pooled bond transactions or a single bond transaction, the fairness opinion should be required only for transactions above $10 million.

Response: This final rule relaxes requirements for fairness opinions. PHAs that have cumulative CFFP borrowings under $2 million, high-performing PHAs with cumulative CFFP borrowings of less than $20 million, and all PHAs using the proceeds to undertake mixed-finance transactions generally are not required to submit fairness opinions.

HUD does not anticipate establishing separate criteria for bond pools. PHAs participating in bond pools are treated in the same manner as PHAs that submit stand-alone Capital Fund Financing Proposals. As such, the standards for requiring or waiving the submission of a fairness opinion will be the same for all PHAs, whether or not they participate in a pooled bond transaction.

Comment: The requirements for construction management and financial controls at proposed § 905.705(l) are duplicative of the requirement that PHAs obtain approval for changes for work items at proposed § 905.705(m) and add unnecessary layers of administrative requirements.

Response: Proposed § 905.705(l) (final § 905.505(l)) is aimed at obtaining representations from PHAs that they have sufficient construction management and financial controls in place to offer protections from fraud, waste, or abuse. Proposed § 905.705(m) (final § 905.505(m)) is a mechanism whereby PHAs may obtain approval from HUD for modifications to their approved budgets. Obtaining such approvals from HUD does not substitute for the value of effective internal controls on the part of the PHA.

Nonetheless, toward the underlying goal of streamlining the regulations where possible, this final rule at § 905.507 removes this requirement for assurances regarding construction management and financial controls for PHAs that meet the following criteria: PHAs that have cumulatively less than $2 million in CFFP financing and are standard or high performers, as well as high-performing PHAs that have cumulatively less than $20 million in CFFP financing, and all PHAs using the proceeds to undertake mixed-finance transactions.

Comment: Proposed § 905.705(p) would establish burdensome and costly requirements on PHAs and should be changed. One commenter suggested that such information should be submitted semi-annually rather than quarterly. Another suggested that HUD limit its requirements to the PHA's annual reports and copies of reports submitted to the financing institution. Other commenters questioned the need for these reports altogether, since HUD should be able to get this information from other reports submitted as part of the PHA's CFP Annual Statement/Performance and Evaluation Report or PHA Annual Plan.

Response: Section 905.505(h)(1) now clarifies that the use of CFFP proceeds shall be included in the CFP Annual Statement/Performance and Evaluation Report and CFP Five-Year Action Plan in the same manner as other uses of a PHA's Capital Funds. In addition, the use of Capital Funds for the payment of debt service needs to be included in the CFP Annual Statement/Performance and Evaluation Report and CFP Five-Year Action Plan in the same manner as other uses of Capital Funds.

HUD requires that PHAs report quarterly in regard to CFFP transactions, because data on the use of CFFP proceeds are not included in automated HUD systems in the same manner as Capital Funds, for which current data on obligation and expenditure can be accessed.

Comment: Proposed § 905.710(b)(3) would require parties to dedicate time and resources to negotiating an agreement without the confidence that they would ultimately obtain HUD approval. The rule should strike a better balance between protecting HUD's limited resources and requiring private parties to commit extensive resources to a transaction that may not be approved.

Response: HUD's review of the documents associated with CFFP transactions is for conformance with program requirements only. As such, any negotiations should already be complete and the documents should be in their final form before the Capital Fund Financing Proposal is submitted to HUD.

HUD nevertheless does recognize and appreciate that clarity and transparency in policy and programmatic requirements increases the efficiency of the overall process, both in structuring the Capital Fund Financing Proposal, and in HUD's review after the proposal is submitted. Toward this end, HUD has been developed legal guidance for bond documents. The legal guidance will provide sample provisions that the PHA could adopt at its discretion. Although the legal provisions would be optional, such provisions could provide a reference point for structuring Capital Fund Financing Proposals, removing some of the uncertainty that PHAs may now experience in structuring their transactions.

Comment: While the proposed rule required PHA to submit a complete set of financing documents (§ 905.705(b)(3)), the proposed rule did not specify the documents that are to be submitted. More importantly, the proposed rule did not indicate how the documents are to be evaluated.

One commenter recommended that § 905.710(b)(3) be removed and made more like the streamlined requirements for mixed-finance projects. Another commenter recommended that HUD establish a process to approve LIHTC LLC (Limited Liability Company)

operating agreements and critical third-party financing documents before these documents are made final.

Response: Financing documents vary significantly from one transaction to the next, even for similar transactions, such as direct loans or private placements. There is no definitive way that HUD can identify in a regulation the entire list of financing documents that each PHA will enter into as part of a CFFP.

In regard to eliminating the requirement for financing documents as part of a streamlined process similar to the mixed-finance program, HUD has had much greater experience with mixed-finance public housing than with the CFFP. Although HUD has been implementing the CFFP on a case-by-case basis since 2000, it was not until 2005 that the program began to be more widely used. As such, the CFFP is not deemed to be ripe for the same streamlining efforts as are currently being promulgated for HUD's mixed-finance program. Nonetheless, HUD appreciates the need to continually increase the efficiency of HUD programs, and this final rule does introduce some streamlining of procedure as have already been discussed in this preamble.

In regard to HUD establishing a process to approve LIHTC LLC Operating Agreements before the documents are finalized, it is important to note that LIHTC documents, and HUD's review thereof, are subject to the mixed-finance program regulations at 24 CFR part 941. On December 27, 2006, HUD published a proposed rule entitled "Streamlined Application Process in Public/Private Partnerships for the Mixed-Finance Development of Public Housing Units." The streamlined process would substantially reduce the legal documents that must be submitted to HUD for review as part of the mixed-finance process.

Comment: Proposed § 905.710(b)(3) (final § 905.510(b)(5)), which provides that HUD will not review preliminary financing documents that are still under negotiation, is problematic. The rule should make this requirement an option at HUD's discretion. PHAs may need assurance that HUD will approve the security interests prior to concluding negotiations.

Response: The CFFP is an appropriations-based financing program. As an appropriations-based form of financing involving the CFFP, the security interest provided by PHAs to lenders or bondholders is a pledge of future Capital Funds, subject to the availability of appropriations. As HUD has approved more than $3 billion in Capital Fund Financing Proposals, the security interest provided pursuant to this program has been well established, accepted by the marketplace, and should be familiar to all program participants.

In terms of reviewing financing documents that are still under negotiation or making the requirement for financing documents optional, HUD is not a party to the agreements between PHAs and their lenders or bondholders, although these negotiations concern substantial Federal funding. HUD's review of the documents associated with CFFP transactions is necessary for conformance with program requirements and to determine that the proposed use of Capital Funds is sound and consistent with use requirements. As such, HUD review can be useful only if negotiations are complete and the financing documents are in their final form and provided to HUD.

Comment: HUD's proposed amendments to part 905 do not address whether Capital Fund financing proceeds may be used for short-term loans or bridge loans. The final rule should expressly provide for these uses. HUD's current informal position appears to be that proceeds from CFFP financings cannot be used to generate program income, and recommended that this type of structure be permitted.

Response: This final rule revises proposed § 905.705(j)(1) (final § 905.505(j)(1)) to explicitly allow for short-term or bridge loans, provided they are fully amortizing. However, the commenter is correct that it has been HUD's position, while implementing the program on a case-by-case basis, that the transactions may not be structured in such a way so as to allow for the generation of program income. The rationale for this approach is related to the differences in financial controls for grant and non-grant programs. HUD permits Capital Funds and HOPE VI funds to be used in a manner that generates program income. These are both grant programs, where the focus is on the initial use of the grant. Part 85 of HUD's regulations (24 CFR part 85) explicitly addresses the generation of program income in grant programs. The CFFP, however, is a financing program. Given the long-term implications of CFFP financings, one of HUD's objectives in reviewing such applications is to ensure, to the extent feasible, that the proposed financing, including the use of the proceeds, will not have a negative effect on the viability of the PHA's public housing over the term of the financing. In order to make this analysis, the permanent use of the proceeds must be known. In the case of program income, however, the eventual re-use of the income cannot be known with any certainty given the fact that the re-use is in the future. This final rule modifies § 905.705(j)(1) to formalize the existing policy that CFFP transactions may not be structured in a manner that generates program income, unless otherwise approved by HUD.

IV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and given OMB control numbers 2577–0157 and 2577–0226. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is significant as meant by the order, although it is not an economically significant regulatory action as defined in 3(f)(1) of the order. This rule creates transfers in that it permits Capital Funds that would be expended in future years to be expended earlier on eligible activities such as large capital improvements; however, this does not result in economically significant differences in expenditures or transfers to and among stakeholders. Rather, it merely time-shifts funding in a way that enables PHAs to obtain the benefits of future funding at an earlier time. In the course of time, however, PHAs would use the same future streams of Capital Funds absent this rule. While the expenses of financing must be considered, these do not rise to the level of economic significance. This rule will have no direct budgetary impact.

The rule in itself does not add any new cost to the financing program and does not create any significant transfers. The only new costs to the program participant are transaction fees and interest cost associated with borrowing under the CFFP rule. These fees and cost would constitute transfers under this rule. For example a municipal bond would cost on average 2 percent in fees, in addition to the coupon interest rate, which is also 5 percent on average. To date, HUD's office overseeing the CFFP report that to date, about $183.4 million has been allocated to debt service

(interest and principal). Applying this rule of thumb, the $183.4 million annual payment would have generated transfers of about $3.7 million initially in fees (2 percent), and about $9.2 million annual in interest costs. HUD's argument on these transfers is that a well-managed PHA would not undertake an investment if the net present value were less than zero. Thus, the option would be exercised only by those PHAs for whom there is an expected benefit. The CFFP final rule would permit PHAs to borrow for uses such as issuing bond debt to be repaid out of future CFP subsidy allocations. The financing costs associated with bond transactions are as follows. A municipal bond would cost on average 2 percent in fees, in addition to the coupon interest rate, which is also 5 percent on average. To date, according to HUD's office overseeing the CFFP, about $183.4 million has been allocated to debt service (interest and principal). That is about 7 percent of annual appropriation for the CFFP program. In addition, this final rule also permits PHAs to pledge up to 100 percent of their Replacement Housing Factor (RHF) funds for debt service, provided that such pledge constitutes no more than 50 percent of the PHA's combined future Capital Funds (*i.e.,* formula funds and RHF funds). In 2008, a total of 294 PHAs received RHF funds: 251 PHAs received $97,936,944 RHF in first increment, and 123 PHAs received $112,825,095 RHF in second increment funding. Five years after the implementation of the RHF phasedown, the $113 million second increment funding would be eliminated and redistributed by formula to all eligible 3,138 PHAs. This means that in time, debt supported by about $98 million in RHF (or as much as $500 million, if one assumes level payments and a 5-year term) could be added to the $10.2 billion "debt ceiling." Data from HUD's office of CFFP also show that the cost of insurance for CFFP transactions approved in 2008 and 2009 were, on average, 1.2 percent of the amount approved.

This final rule provides the regulatory framework for compliance with the statute and establishes an approval process for PHAs to request authorization from HUD to pledge Capital Funds for debt service payments, including payments of debt service and customary financial costs for the modernization and development of public housing—including public housing in mixed-finance development. Key benefits of the use of Capital Funds for financial activities include:

- There exist economies of scale in making large-scale housing improvements. If the average cost for improving a unit fell as the number of units improved increases, then it would make economic sense to increase the number of units improved. These benefits may warrant undertaking the costs of debt.
- The lump sum of loan proceeds will make possible large-scale improvements at the PHA's biggest sites that could not be undertaken on the basis of annual CFP allocations. This is corroborated using the findings of a study by Abt Associates and funded by HUD (Abt Associates, *Capital Needs of the Public Housing Stock in 1998: Formula Capital Study,* January 2000; hereafter, "the study"). The study estimated the total inspection-based existing modernization needs for the 1,194,370 units of public housing to be $22.5 billion in 1998—an average of $18,847 per unit, and another $2 billion to address ongoing accrual needs or, on average, $1,679 per unit, assuming that the inspection-based existing modernization needs were completely met.
- Large-scale repair work will diminish the backlog of deterioration at key sites now, saving future CFP dollars and better securing the portfolio for the future.
- Making repairs now using loan proceeds should also result in lower operating costs, linking the capital investment with the need for properties to stand on their own financially under HUD's new subsidy and asset management rules.
- Allowing more flexibility in planning will allow PHAs to take advantage of economic trends. The optimal investment decision depends upon expectations concerning the direction of critical variables. For example, if the manager of a PHA observes that construction costs are rising faster than the costs of debt, there would be a reason to invest sooner and at a higher intensity than if construction costs were declining. This rule allows the flexibility to invest at varying levels of intensity. Indeed, the Department believes that a well-managed PHA would not undertake an investment if it did not view the transaction as having a positive impact on its Capital Fund program. Thus, the option would be exercised only by those PHAs for whom there is an expected benefit.
- There are also costs of the use of Capital Funds for financial activities. The CFFP final rule would permit PHAs to borrow and issue bond debt to be repaid out of future Capital Fund program subsidy allocations. However, there are financing costs associated with such transactions that are discussed elsewhere in this economic impact statement.

In conclusion and notwithstanding the financing costs under the CFFP, the implementation of the final rule would not have any budgetary impact on the Federal budget, and would not create any significant transfers, but rather would advantageously time-shift the use of Capital Funds. The rule would also comply with the statutory requirement that requires the Secretary of HUD to establish guidelines for the use of public housing Capital Funds for financial activities.

HUD also considered alternatives to this rulemaking. As an alternative to publishing a rule on the CFFP, HUD could continue to implement the CFFP on a case-by-case basis without publishing a rule, as we have been doing since 2000. This is not an optimal approach, as the rulemaking process enables HUD to solicit comment from the public on the proposed rule, and to incorporate changes into the program based on those comments to the extent HUD determines it to be feasible. Furthermore, a final rule published in the **Federal Register** and then the CFR will serve to establish rules of general applicability and make those rules accessible to the public.

Another possible alternative would involve changing the terms we deem approvable in a CFFP transaction. For example, we could allow a PHA to pledge more than 33 percent of its Capital Funds, or borrow for a period in excess of 20 years. Since HUD has been implementing the CFFP on a case-by-case basis since 2000, 33 percent appears to be an appropriate debt coverage ratio. At that ratio, PHAs can borrow a sufficient sum to enable them to address a substantial scope of work, but at the same time leave a sufficient amount of Capital Funds after the payment of debt service to mitigate for changes in appropriations, and to enable PHAs to address ongoing modernization needs. With regard to changing the period of years for which a PHA could borrow funds for, while extending the period would increase borrowing capacity, it would greatly increase the amount of Capital Funds used to pay interest costs. Furthermore, synchronizing the term of the CFFP with the term of the Capital Fund ACC amendment that PHAs signed each year when they receive Capital Fund grants would provide consistency between the financing program and its intended funding source.

HUD's economic impact analysis is contained in the docket file, which is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays

in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. This final rule does not impose any Federal mandate on any State, local, or Tribal government or the private sector within the meaning of UMRA.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made, at the proposed rule stage, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). That Finding of No Significant Impact remains applicable to this final rule and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The regulatory changes made by this final rule will allow PHAs additional flexibility in using their Capital Funds. However, the decision whether to use this capability will be left to each PHA. Although some small entities may participate in the program, the rule does not impose any legal requirement or mandate upon them and, accordingly, will not have a significant impact on small PHAs. This final rule also grants some procedural exemptions to small PHAs, as measured by their total financings. Therefore, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Congressional Review of Final Rules

This rule constitutes a "major rule" as defined in the Congressional Review Act (5 U.S.C. Chapter 8). This rule has a 60-day delayed effective date and will be submitted to the Congress in accordance with the requirements of the Congressional Review Act.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for 24 CFR part 905 is 14.850.

List of Subjects in 24 CFR Part 905

Grant programs—housing and community development, Modernization, Public housing, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, HUD amends 24 CFR part 905 as follows:

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

■ 1. The authority citation for 24 CFR part 905 is amended to read as follows:

Authority: 42 U.S.C. 1437g, 42 U.S.C. 1437z–2, and 3535(d).

■ 2. Designate §§ 905.10 and 905.120 as subpart A, and add a heading for subpart A before current § 905.10 to read as follows:

Subpart A—Capital Fund

■ 3. Revise the heading of § 905.120 to read as follows:

§ 905.120 Penalties for slow obligation or expenditure of Capital Fund program assistance.

* * * * *

■ 4. Add and reserve subparts B through D, and add subpart E, consisting of §§ 905.500 through 905.515, to read as follows:

Subpart E—Use of Capital Funds for Financing

Sec.

§ 905.500 Purpose and description.

(a) This subpart provides the requirements necessary for a PHA to participate in the Capital Fund Financing Program (CFFP), under which the PHA may obtain HUD approval to borrow private capital and pledge a portion of its annual Capital Fund grant or public housing assets and other public housing property of the public housing agency as security.

(b) Under the CFFP, PHAs are permitted to borrow private capital to finance public housing development or modernization activities. A PHA may use a portion of its Capital Fund for debt service payments and usual and customary financing costs associated with public housing development or modernization (including public housing in mixed-finance developments). A PHA that undertakes such financing activities may, subject to HUD's written approval, grant a security interest in its future annual Capital Fund grants, which shall be subject to the appropriation of those funds by Congress. The PHA's financing activities are not obligations or liabilities of the Federal Government. The Federal Government does not assume any liability with respect to any such pledge of future appropriations, and the Federal Government neither guarantees nor provides any full faith and credit for these financing transactions.

§ 905.505 Program requirements.

(a) *Written approval.* A PHA shall obtain written HUD approval for all

Capital Fund financing transactions that pledge, encumber, or otherwise provide a security interest in public housing assets or other property, including Capital Funds, and use Capital Funds for the payment of debt service or other financing costs. HUD approval shall be based on:

(1) The ability of the PHA to complete the financing transaction along with the associated improvements;

(2) The reasonableness of the provisions in the Capital Fund Financing Proposal considering the other pledges or commitments of public housing assets, the PHA's capital needs, and the pledge being proposed; and

(3) Whether the PHA meets the requirements of this subpart.

(b) *Antideficiency.* Any pledge of future year Capital Fund grants under this section is subject to the availability of appropriations by Congress for that year. All financing documents related to future year Capital Fund amounts must include a statement that the pledging of funds is subject to the availability of appropriations.

(c) *Conditions on use*—(1) *Development.* Any public housing that is developed using amounts under this part (including proceeds from financing authorized under this part) shall be operated under the terms and conditions applicable to public housing during the 40-year period that begins on the date on which the project becomes available for occupancy, except as otherwise provided in the 1937 Act.

(2) *Modernization.* Any public housing or portion of public housing that is modernized using amounts under this part (including proceeds from financing authorized under this part) shall be maintained and operated during the 20-year period that begins on the latest date on which the modernization is completed, except as otherwise provided in the 1937 Act.

(3) *Applicability of latest expiration date.* Public housing subject to the use conditions described in paragraph (c) of this section, or to any other provision of law mandating the operation of housing as public housing for a specific length of time, shall be maintained and operated as required until the latest such expiration date.

(4) *Declaration of Trust.* All public housing rental projects must show evidence satisfactory to HUD of an effective Declaration of Trust being recorded in first position, meeting the requirements of paragraph (c) of this section and covering the term of the financing. If part of a mixed-finance project, this evidence will be with the mixed-finance evidentiary documents.

(d) *Public Housing Assessment System (PHAS) designation.* Generally, a PHA shall be designated a standard performer or high performer under PHAS (24 CFR part 902), and must be a standard performer or higher on the management and financial condition indicators. HUD will consider requests from a PHA designated as troubled under PHAS when the PHA is able to show that it has developed appropriate management and financial capability and controls that demonstrate its ability to successfully undertake the Capital Fund Financing Proposal. The PHA must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105(a). If a PHA has received a letter of findings, charge, or lawsuit involving ongoing systemic noncompliance under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Fair Housing Act, or Section 109 of the Housing and Community Development Act of 1974, and the letter of findings, charge, or lawsuit has not been resolved to HUD's satisfaction, then unless the Capital Fund Financing Proposal is part of a plan to address such findings, charge, or lawsuit, the PHA will not be eligible for financing pursuant to the CFFP. HUD will determine if actions to resolve the charge, lawsuit, or letter of findings taken are sufficient to resolve the matter.

(e) *Management capacity.* A PHA shall have the capacity to undertake and administer private financing and construction or modernization of the size and type contemplated. In order to determine capacity, HUD may require the PHA to submit a management assessment conducted by an independent third party, in a form and manner prescribed by HUD.

(f) *Existing financing.* A PHA shall identify the nature and extent of any existing encumbrances, pledges, or other financing commitments of public housing funds undertaken by the PHA.

(g) *Need for financing.* (1) A PHA must complete a physical needs assessment at the project level, in the form and manner prescribed by HUD that covers the PHA's entire public housing portfolio for the term of the financing and that takes into consideration existing needs and the lifecycle repair and replacement of major building components. The activity to be financed must be identified as a need in the physical needs assessment.

(2) Based on the assessment under paragraph (g)(1) of this section, the PHA must demonstrate that the financing will not negatively impact the ability of the PHA to meet the ongoing needs of its public housing portfolio over the term of the financing. In making this demonstration, PHAs must reduce any projected future Capital Fund grants to account for planned or anticipated activities that would have the effect of reducing or otherwise limiting the availability of future Capital Fund grants. PHA projections must be detailed on the portfolio schedule form prescribed by HUD, and shall project a stabilized number of units (Stabilized Base Unit Count) to be reached in no more than 5 years after all planned or anticipated activities have been completed that would reduce future Capital Fund grants. PHAs must also take into consideration projected use of Capital Funds for other eligible activities under part 905, and may take into consideration alternative sources of financing that are available to help meet its needs.

(3) For PHAs that are proposing to borrow more than $2 million on a cumulative basis, to the extent that:

(i) Capital and other eligible Capital Fund needs exceed projected Capital Fund program funding amounts, and the PHA is not leveraging non-public housing funds as part of its Capital Fund Financing Proposal transaction, then

(ii) The PHA must demonstrate that it has considered leveraging non-public housing funds, and state why the proposed financing is appropriate in light of alternative sources available.

(iii) Notwithstanding paragraphs (g)(3)(i) and (ii) of this section, PHAs that size their financing by utilizing only replacement housing factor (RHF) funds, or PHAs that propose to use their Capital Fund Financing Proposal proceeds as part of a mixed-finance modernization transaction, are not required to comply with § 905.505(g).

(h) *CFP Plan.* (1) The use of the CFFP proceeds shall be included in a form and manner as required by HUD for CFP planning and budgeting and in a same manner as a Capital Fund grant. The CFFP proceeds shall be included as a separate Capital Fund grant to the same extent that PHAs are required to plan and budget Capital Fund grants. The use of Capital Funds for the payment of debt service and related costs shall be planned and budgeted as would other eligible uses of Capital Funds.

(2) As part of its Capital Fund Financing Proposal, the PHA shall submit a Capital Fund financing budget, in the form and manner required by HUD, detailing the proposed use of the Capital Fund Financing Proposal proceeds. There shall be no requirement for PHAs to submit a Capital Fund financing budget as part of their Capital

Fund financing proceeds where the sizing of the financing is based upon the use of RHF funds for debt service, or where the Capital Fund Financing Proposal proceeds are being used as part of a mixed-finance transaction. Approval letters for mixed-finance and RHF-related Capital Fund financing transactions shall be conditioned upon the approval of the mixed-finance proposal, or, in the case of conventional development, upon the approval of the development proposal and the execution of an associated construction contract with which the Capital Fund financing proceeds would be used.

(3) The work financed with Capital Funds and described in the Capital Fund financing budget will be based on the physical needs assessment. The Capital Fund financing budget shall list the work items (*e.g.,* roof replacement, window replacement, accessibility modifications) by development. These work items will constitute performance measures upon which the PHA's performance will be evaluated. A general representation of the work (*e.g.,* "rehabilitation of the development") is not sufficient.

(4) The CFP Plan (submission (as described in paragraph (h) of this section) shall include a copy of the physical needs assessment described in § 905.505(g).

(5) Financing proceeds under this part may be used only for the modernization or development of public housing and related costs including the modernization or development of non-dwelling space. Financing proceeds may not be used for administration or central office cost center costs (except for mixed-finance projects), management improvements, or upon non-viable projects, such as those subject to required conversion. Financing proceeds may be used to reimburse predevelopment costs, but only to the extent they were incurred in conformance with applicable regulatory requirements.

(i) *Debt Coverage Percentage.* (1) Except as stated in § 905.505(i)(2), a PHA shall not pledge more than 33 percent of its annual future Capital Fund grants for debt service payments, assuming level Capital Fund appropriations over the term of the debt obligation and any reduction attributable to activities projected by the PHA to occur during the term of the financing such as demolition, disposition, or conversion of public housing units or other occurrences that could limit the availability of Capital Funds, including a voluntary compliance agreement. This percentage of Capital Funds dedicated for debt service, taking into account adjustments for activities that would reduce the receipt of Capital Funds, is called the "Debt Coverage Percentage."

(2) A PHA may pledge up to 100 percent of any projected replacement housing factor (RHF) grants for debt service payments, provided that the pledge extends to the formula fund portion of its Capital Fund grants also, but that not more than 50 percent of its overall projected Capital Fund grants (including formula funds and RHF funds) are pledged. RHF projections shall account for any projected reductions in RHF over the term of the financing. Unless otherwise approved by HUD, PHAs shall be limited to sizing their loans based upon increments of RHF currently being received by the PHA. CFFP transactions pledging RHF funds shall include accelerated amortization provisions, requiring all RHF funds received by the PHA to pay debt service as those RHF funds are received. A RHF grant shall be used only to develop or pay financing costs for the development of replacement public housing units in accordance with § 905.10.

(3) Subject to the reasonableness test in § 905.505(a)(2), PHAs may exceed 33 percent when pledging existing Capital Fund grants and RHF grants for the payment of debt service. Existing grants are grants that have been received by the PHA at the time of HUD's approval of the Capital Fund Financing Proposal.

(j) *Terms and conditions of financing.* The terms and conditions of all financing shall be reasonable based on current market conditions. The financing documents shall include the following, as applicable:

(1) *Term.* The term of the Capital Fund financing transaction shall not be more than 20 years. All Capital Fund financing transactions shall be fully amortizing. Bridge loans and other short-term loans are permitted; however, unless otherwise approved by HUD, the CFFP Financing transaction may not be structured in a manner that generates program income.

(2) *Acceleration.* Unless otherwise approved by HUD, the financing documents shall provide that HUD approval is required before a lender may accelerate a PHA's debt obligation, for default or otherwise.

(3) *Public housing assets.* A PHA may not pledge any public housing assets unless specifically approved in writing by HUD. PHAs seeking approval of a pledge of public housing assets must submit documentation to HUD that details the nature and priority of the pledge.

(4) *Variable interest rate.* All variable-rate transactions shall include an interest-rate cap. The financing documents must specify that the PHA shall not be liable to pay debt service with public housing funds, and that there shall be no recourse to public housing assets, beyond the interest-rate cap. The limitation on the pledge of Capital Funds specified in § 905.505(i) shall be calculated based on the interest-rate cap.

(5) *Other pledges or commitments.* PHAs seeking approval of a pledge of public housing assets must describe the nature and extent of existing commitments or pledges of public housing assets, providing documentation of such other commitments or pledges to the extent required by HUD.

(6) *Terms and conditions.* Financing documents must include any other terms and conditions as required by HUD.

(k) *Fairness opinion.* The PHA shall provide an opinion, in a form and manner prescribed by HUD, from a qualified, independent, third-party financial advisor attesting that the terms and conditions of the proposed financing transaction are reasonable given current market conditions with respect to such matters as interest rate, fees, costs of issuance, call provisions, and reserve fund requirements.

(l) *Financial controls and construction management.* (1) The PHA shall have a financial control and construction management plan describing how the PHA will ensure that:

(i) Adequate controls are in place regarding the use of the Capital Fund financing proceeds; and

(ii) The improvements will be developed and completed in a timely manner consistent with the contract documents.

(2) This plan shall contain protocols and financial control mechanisms that address the design of the improvements, construction inspections, construction draws, and requisition approval checks and balances. A PHA that is designated troubled under PHAS, or other PHAs as determined by HUD, may be required to institute risk mitigation measures to ensure that the funds are used properly and for the purposes intended.

(m) *Work items.* To the extent that any changes in work items financed by Capital Fund financing proceeds meet or exceed the following threshold requirements determined by HUD, PHAs must obtain written approval of amendments to their Capital Fund financing budget from HUD:

(1) A change in the type of activity being financed (for example, if the approved Capital Fund financing budget contemplated the proceeds being used for modernization, but after the proposal is approved, the PHA decides instead to pursue development);

(2) A change in the project being modernized or developed with the proceeds;

(3) A reduction in 20 percent or more in the number of public housing units being modernized; or

(4) An increase of 20 percent or more of the cost of non-dwelling space.

(n) *Applicability of other Federal requirements.* The proceeds of the Capital Fund financing are subject to all laws, regulations, and other requirements applicable to the use of Capital Fund grants made under 24 CFR part 905, unless otherwise approved by HUD in writing. PHAs undertaking CFFP transactions shall be subject to the following requirements, which shall be further enumerated in a Capital Fund Financing Amendment to the Annual Contributions Contract (CFF ACC Amendment):

(1) Amounts payable to the PHA by HUD pursuant to the CFFP and pledged to the payment of debt service by the PHA shall be used exclusively for debt service in accordance with the debt service schedule approved by HUD and shall not be available for any other purpose;

(2) The financing does not constitute a debt or liability of HUD or the United States, the full faith and credit of the United States are not pledged to the payment of debt service, and debt service is not guaranteed by HUD or the United States;

(3) Nothing in this CFF ACC Amendment or 24 CFR part 905 is intended to diminish HUD's authority to administer, monitor, and regulate the public housing program, including HUD's authority to exercise any administrative sanction or remedy provided by law; provided, however, that except as required by law, HUD will not assert any claim or right under the ACC, including the exercise of administrative sanctions and remedies, if and to the extent that the effect of such claim or right would be to reduce the payment of Capital Fund moneys to the PHA below the level necessary to pay debt service or delay the time for payment of such moneys such that required amounts would not be available to pay debt service when due;

(4) The financing is subject to mandatory prepayment prior to the obligation end date and expenditure end date of the Capital Fund financing proceeds to the extent necessary for the Capital Fund Financing Proposal proceeds to comply with section 9(j) of the 1937 Act (42 U.S.C. 1437g(j)). Bond and loan documents shall include appropriate provisions such that prepayment shall be made by the lender, trustee, or appropriate third-party servicer approved by HUD, without any action by HUD post-approval;

(5) HUD agrees, subject to the availability of appropriations, to approve immediately upon receipt from the PHA (subject to any legal requirements or constraints applicable at the time), a CFP Plan document (as described in 24 CFR 905.505(h)) and/or an annual CFF ACC Amendment, to the extent and in an amount sufficient to make the applicable debt service payment;

(6) Prior to cumulatively reducing its inventory of public housing units by more than 5 percent of the Stabilized Base Unit Count, if, after the removal of units from inventory, the Debt Coverage Percentage under § 905.505(i)(1) would constitute more than 33 percent of future Capital Funds, the PHA shall prepay the financing such that the reduction in inventory shall not cause the Debt Coverage Percentage to increase. If the reduction in inventory is required by law or public housing requirements, the prepayment is not required to be made prior to the reduction in inventory, but instead shall be made as soon as possible after the PHA becomes aware of the requirement of law or public housing requirements, but only to the extent that Capital Funds are not otherwise needed by the PHA to address the health and safety issues or other requirements of law in the PHA's public housing portfolio, all as determined by HUD. For PHAs that size their loans based upon the projected receipt of RHF funds, prior to undertaking an activity that will reduce its RHF units below the number of units projected in the Capital Fund Financing Proposal as required by § 905.505(i)(3), the PHA shall prepay its loan such that debt service does not exceed 100 percent of projected RHF after accounting for the reduction in RHF units, all as determined by HUD.

(o) *Performance measures.* Pursuant to 24 CFR 905.505(h) a PHA is required to identify in its CFP Plan documents specific items of work that will be accomplished using the proceeds of the proposed financing. The identified items, which shall be quantifiable, shall be the basis on which HUD evaluates a PHA's performance. HUD may also utilize the Capital Fund financing budget, and Capital Fund Financing Proposal approval documents as the basis to evaluate a PHA's performance. Failure to meet performance measures may result in:

(1) Failure to receive HUD approval for future financing transactions;

(2) Failure to be considered for future competitive grant programs; and

(3) Other sanctions HUD deems appropriate and authorized by law or regulation.

(p) *Reporting requirements.* (1) The use of the CFFP proceeds shall be reported in the same manner as a Capital Fund grant. The PHA shall submit a performance and evaluation report on a quarterly basis. PHAs that utilize their Capital Fund financing proceeds as part of a mixed-finance transaction, and PHAs that size their financing based upon RHF in their Capital Fund financing transactions, are not required to submit quarterly reports.

(2) Each CFFP transaction and/or development project is subject to fiscal closeout in the same manner of a Capital Fund grant. Fiscal closeout includes the submission of an Actual Modernization Cost Certificate (AMCC) or Actual Development Cost Certificate (ADCC), an audit, if applicable, a final quarterly report, and a final Performance and Evaluation report.

§ 905.507 Streamlined application requirements for standard and high-performing PHAs.

(a) PHAs with cumulative CFFP borrowings of less than $2 million and that are standard or high performers under PHAS; PHAs that are high performers under PHAS with cumulative CFFP borrowings of less than $20 million; PHAs that propose to use their CFFP proceeds in a mixed-finance transaction, or proposals where the sizing of the financing is based only upon the use of RHF funds for debt service, shall not be required to submit:

(1) A third-party management assessment under § 905.505(e);

(2) A third-party fairness opinion under § 905.505(k);

(3) An assurance of financial controls and construction management under § 905.505(l).

(b) Notwithstanding § 905.507(a), if HUD determines that interest or other costs do not appear to meet industry norms, or other aspects of the proposal present atypical risks, HUD retains the discretion to require assessments, opinions, or controls, or to return the proposal.

§ 905.510 Submission requirements.

(a) All requests for HUD approval of CFFP transactions shall be submitted to the Office of Public and Indian Housing (PIH), Attention: Office of Capital

Improvements, in such form and in such number of copies as designated by PIH through direct notice.

(b) Each Capital Fund Financing Proposal shall be tabbed and presented with the following information in the order listed:

(1) *PHA transmittal letter.* The PHA must submit a letter signed by the PHA Executive Director (or Chief Executive Officer, if applicable) briefly describing the proposed financing and use of proceeds, the percentage of Capital Funds being dedicated to debt service, the percent of the PHA's public housing units benefiting from the financing, and the impact of the financing upon the public housing portfolio, and transmit to HUD a request for approval of the CFFP transaction. The transmittal letter shall provide any additional information required pursuant to this subpart including, but not limited to:

(i) Describing the transaction being proposed;

(ii) Describing in detail any existing financing or similar commitments of public housing funds;

(iii) Describing and providing justification for significant financial or legal provisions, such as variable interest or acceleration provisions;

(iv) Describing construction management and financial controls.

(2) *Term sheet, table of contents, and contact information.* The PHA must submit the HUD-prescribed term sheet that describes the basic terms of the transaction and financing structure, including the proposed amount of the financing, the term, interest rates, security, and reserve requirements. A table of contents must identify the materials submitted, as well as list the materials the PHA is not required to submit pursuant to this rule. Contact information for all of the participating parties is also required.

(3) *Financing schedules.* The PHA must submit financing schedules that include a debt service schedule, sources and uses schedule, and a portfolio schedule (including projections for RHF, as appropriate), and an adequacy-of-Capital Funds schedule, all in a format prescribed by HUD.

(4) *Other required submissions.* The following submissions must be incorporated in the proposal to the extent required to be submitted by this part: Capital fund financing budget, management assessment, fairness opinion, and physical needs assessment.

(5) *Financing documents.* The PHA must submit a complete set of the legal documents that the PHA will execute in connection with the CFFP transaction. The legal documents must identify the nature and extent of any security being provided, as well as the position of any security interest (*e.g.,* first lien position, second lien position). The legal documents are to be submitted to HUD only after they have been negotiated and agreed upon by the parties to the transaction. HUD will not review preliminary documents that are still under negotiation.

(6) *Declaration of Trust requirements.* The PHA must submit evidence that the PHA has conformed to the Declaration of Trust requirements in accordance with this subpart.

(7) *Board resolution and counsel's opinion.* The PHA must submit evidence of a PHA Board resolution that authorizes the PHA to: Undertake the loan up to a specified amount, provide all security interests required by the loan, and repay the loan with Capital Funds (including RHF funds, when applicable) as required by the financing documents. The Board resolution must also provide authorization for the Executive Director or other executive staff to negotiate and enter into all legal documents required as part of the transaction. The PHA must submit PHA counsel's opinion, which opines that the PHA has the authority to enter into the transaction, and affirms that the transaction complies with the requirements of the 1937 Act, as amended; Federal regulations; and the ACC, as amended.

(8) *Depository Agreement and ACC.* The PHA must submit a Depository Agreement (form HUD–51999) and a CFF ACC Amendment.

(9) Other documents as required by HUD.

§ 905.515 HUD review and approval.

(a) After receipt of a Capital Fund Financing Proposal, HUD shall review the proposal for completeness. HUD will return to the PHA all incomplete or unapprovable proposals, identifying the deficiencies, and will not take any further action. HUD will also return proposals submitted by entities other than the PHA (*e.g.,* the PHA's consultants). HUD shall review all complete proposals for compliance with the requirements under this subpart. HUD may require the PHA to make modifications to any of the CFFP documents submitted and may require the PHA to resubmit all or any portion of the proposal. After HUD determines that a proposal complies with all applicable requirements, HUD shall notify the PHA in writing of its approval and any condition(s) of the approval.

(b) (1) A copy or copies of the CFF ACC Amendment shall accompany the approval letter.

(2) Within 60 days of the date of HUD's approval of the transaction or, if HUD sets conditions on its approval, within 60 days of the date that the PHA satisfies such conditions (as evidenced by documentation retained in the PHA's file and available to HUD upon request), but in no event longer than 120 days after the HUD approval, unless the time has otherwise been extended by HUD in writing, the PHA must submit:

(i) Closing documents as directed by HUD; and

(ii) All documents required by HUD to take certain actions such as initiating debt service payments through HUD's automated systems.

(3) Failure to provide the required documents to HUD within the time frame required under § 905.515(b)(2) may result in HUD rescinding its approval.

Dated: October 8, 2010.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

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